

Volume 1

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ALSUP

ORACLE AMERICA, INC.,)	
)	
Plaintiff,)	
)	
VS.)	No. C 10-3561 WHA
)	
GOOGLE, INC.,)	
)	
Defendant.)	
_____)	San Francisco, California
		Monday, May 9, 2016

TRANSCRIPT OF PROCEEDINGS

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(Appearances continued on next page)

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PROCEEDINGS

Monday - May 9, 2016

7:30 a.m.

P R O C E E D I N G S

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(The following proceedings were held in open court,
outside the presence of the jury:)

THE COURT: Good morning. Have a seat, please. Let's
call the case.

THE CLERK: Calling CV 10-3561-WHA, Oracle America,
Inc. vs. Google, Inc.

The matter is on for a jury trial, jury selection this
morning.

Counsel, please state your appearances for the record.

MR. BICKS: Good morning, Your Honor. Peter Bicks
from Orrick for Oracle. And you know Annette Hurst. Mark
Phillips will be helping me this more. Matt Sarboraria you
have met from Oracle, Lisa Simpson, Gabe Ramsey, and Georges
Saab, who is going to be the corporate representative.

THE COURT: Say the name of the representative.

MR. BICKS: Georges Saab. S-A-A-B.

THE COURT: Okay. Welcome to all of you. And?

MR. VAN NEST: Good morning, Your Honor. Bob
Van Nest, Kecker & Van Nest, for Google, and I'm here with a
number of people whom you met. Christa Anderson, Dan Purcell,
Matthias Kamber.

THE COURT: The last name again?

1 **MR. VAN NEST:** Kamber, K-A-M-B-E-R. Michael Kwun.

2 Mike Tiktinsky is helping us this morning, and our corporate
3 representative from Google is Katherine Lacavera. She was here
4 last time as well. I should introduce Reed Mullen. We don't
5 have enough chairs. And Maya Karwande.

6 **THE COURT:** I guess you will just have to stand.

7 **MR. VAN NEST:** I will yield shortly.

8 **THE COURT:** I see the famous file cabinet over there.

9 **MR. VAN NEST:** It will remain standing.

10 **THE COURT:** All right. Welcome to all of you. We are
11 here for trial, jury trial, and we will get started as soon as
12 the jury assembly room is ready to send them down.

13 I apologize to those of you in the public seating area.
14 I'm going to need all of that section over there so you three
15 will have to move over here in order -- or move someplace
16 because I need that whole section for the jury, plus a couple
17 of rows over there, but once we get the jury selected, we'll
18 have plenty of room, I'm sure, for everyone.

19 But that's probably going to take at least half of today
20 to get the jury selected.

21 Okay. What items can I help you with this morning before
22 we call in the jury?

23 **MR. VAN NEST:** Your Honor, we have one agreement on
24 the questionnaire for automatic strikes. You had asked us to
25 try to agree on that.

1 **THE COURT:** Yes.

2 **MR. VAN NEST:** I do have a question on the
3 questionnaire, Question 9F, as in *Frank*, which is, "If you are
4 personally acquainted with a witness," and assuming that it's
5 the right witness, the witness is the actual person that
6 they're acquainted with, that's the -- the parties agree that
7 person can be automatically excused from the questionnaire as
8 long as it's clear that they've identified --

9 **THE COURT:** This is Question 9D?

10 **MR. VAN NEST:** 9F.

11 **THE COURT:** 9F?

12 **MR. VAN NEST:** Potential witnesses.

13 **THE COURT:** Well, how about Question 9D?

14 **MR. VAN NEST:** B? D?

15 **THE COURT:** No. D. We're already going to put the
16 people who have a strong opinion on 9D or E -- we're going to
17 put them in the back of the room; right?

18 **MR. VAN NEST:** That's right.

19 **MR. BICKS:** Right.

20 **THE COURT:** All right. But then on automatic
21 exclusions, we're going to just automatically excuse anyone who
22 circles a name on the back side, but we have to check to make
23 sure it's somebody who is really in the case.

24 **MR. VAN NEST:** That's right. That's right.

25 **THE COURT:** So I may have to -- you won't have the

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1 benefit of the questionnaires at the time I do that quizzing.
2 The juror is going to be standing right there, and I will just
3 have to ask enough questions to satisfy you that it's the same
4 person.

5 **MR. VAN NEST:** That's right.

6 **THE COURT:** Let's look at Number 9D or E. Could I
7 convince you that we should just excuse automatically anybody
8 on 9D or E who answers *yes* to either D or E?

9 **MR. VAN NEST:** Your Honor, I would prefer to wait and
10 see how the selection shakes out and how many people we have.
11 And I don't know how many people are going to be in that
12 category, but I'd prefer to follow the procedure you indicated.

13 **THE COURT:** All right. If you don't agree, both of
14 you don't agree, I'm not going to do it. What's going to
15 happen is you both are going to play games and you're going to
16 say *oh, that person is favoring our side. Oh, we've got to*
17 *fight like hell to keep them in the venire*, and then you're
18 both going to have that situation and then you're both going to
19 waste a lot of time trying to save somebody who can't be saved,
20 but who knows.

21 All right. At least we'll have them sent to the end of
22 the line.

23 **MR. VAN NEST:** That's right.

24 **THE COURT:** So we have -- thank you for the -- that's
25 the only one you could come up with an automatic exclusion on?

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1 **MR. VAN NEST:** That's right. We had a disagreement
2 about 9C. 9C was, "Had you or a loved one within the last 10
3 years been employed, owned stock."

4 I think Google is okay with an automatic strike there, but
5 I think Oracle wanted some further examination on that. We'd
6 be okay with automatically disqualifying those people, too.

7 **MR. BICKS:** We have a concern there, Your Honor. It's
8 just that ten years, are we going to lose people that would be
9 good to keep? If it's somebody current, it seems like an easy
10 call, but if we're going back that far, is it helpful to have a
11 larger group here?

12 **THE COURT:** Okay. So let's -- are we done on this?

13 **MR. VAN NEST:** Yes.

14 **THE COURT:** All right. What else can I help you with?

15 **MR. BICKS:** Can I, Your Honor, just raise a couple
16 questions I had, just so I know?

17 **THE COURT:** Yes.

18 **MR. BICKS:** First of all, if there are privacy issues
19 that come up during the *voir dire*, what is the Court's
20 preference for how we handle that? I don't want to overdo it,
21 but I -- on the other hand, I want to know what you expect and
22 what's the best way to handle it.

23 **THE COURT:** Give me an example of what you mean?

24 **MR. BICKS:** We ask somebody a question and you can see
25 that they're kind of feeling uncomfortable about answering and

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1 there is some indication that they may want to discuss it in
2 private, something along those lines.

3 **THE COURT:** Well, you can ask them would they prefer
4 to go over that in private. Now, it can't be in private. It
5 will just be more private.

6 **MR. BICKS:** Right.

7 **THE COURT:** Because we'll still have at least two
8 lawyers and me and the court reporter, and it may, depending on
9 the circumstances, be that it's in open court if it's during a
10 break when most people are out having a break.

11 Most of that front row there I'm going to need now for the
12 jury, so you have got to give that up.

13 So just ask them that question and probably they'll say
14 yeah, that would be better.

15 **MR. BICKS:** Understood.

16 And when we do the individual follow-up -- let's say, for
17 example, somebody has strong feelings about a witness or
18 something like that and we have to caucus or take it up with
19 Your Honor, would that come out of -- that would come out of
20 the time of the side who is doing the *voir dire*?

21 **THE COURT:** Yes. But if it reaches the point of
22 unfairness to that person, to that lawyer, then I will probably
23 give them a little more time. But I -- yes. If you're the one
24 asking questions and it requires a sidebar, yeah, that comes
25 out of your time.

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1 **MR. BICKS:** Okay. And one issue I can just anticipate
2 kind of, given the kind of the neutral statement and the
3 posture of the case, is that there's a good shot that some
4 people kind of will be thinking that Google is kind of starting
5 out behind here because of the -- what the Court has -- what
6 everybody agrees in terms of kind of the instruction on the
7 copyright infringement. I'm just raising now whether or not
8 that kind of a leaning -- I don't think that should be kind of
9 an automatic strike for cause on the Google side until we have
10 an opportunity to discuss it with the individual.

11 **THE COURT:** I'm not going to give them the jury
12 instruction on fair use, one we have had so many rounds on.
13 That comes later. That is not going to come during the *voir*
14 *dire*. Did you think that was going to come during the *voir*
15 *dire*?

16 **MR. BICKS:** We have the shorter neutral statement.

17 **THE COURT:** The half-page statement.

18 **MR. BICKS:** Yes. I can kind of see that issue coming
19 up during the *voir dire*. And my only observation of that is I
20 just don't think if the posture of this is people are hearing
21 okay, so, you know, we've got --

22 **THE COURT:** You are asking me to rule on a
23 hypothetical. I'd have to hear how -- look at the body
24 language and everything else to see what I thought about it. I
25 can't say positively that that's -- we'll just have to see.

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1 **MR. BICKS:** Okay.

2 **THE COURT:** I'm not going to give you a ruling on that
3 yet.

4 **MR. BICKS:** Thank you.

5 **THE COURT:** I don't see that as likely to come up, but
6 maybe. Let's wait and see how it comes up in the exact wording
7 of the questions.

8 **MR. BICKS:** Thank you.

9 **THE COURT:** What else?

10 **MR. BICKS:** We've exchanged graphics yesterday for the
11 openings and they're pretty minor issues on both sides, but
12 since I would be the one who is going first, I would want to
13 have those issues cleared up. There are only one or two pretty
14 minor ones, but --

15 **THE COURT:** Let's get into that then.

16 Dawn, can you check down there to see how they are doing
17 timewise.

18 **THE CLERK:** Oh, it's going to take them a while,
19 Judge. They're right next door --

20 **THE COURT:** We have some -- probably have 20-plus
21 minutes, maybe 30 minutes, so we can get into your opening --
22 let's do it. Let's do it right now. What's the first issue?

23 **MR. BICKS:** Bob, are you still on the Bob Lee thing?

24 **MR. VAN NEST:** No.

25 I wanted to talk about one of the slides, Your Honor. I

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1 can either hand it up or we can put it on the graphic, if we
2 could get control of it, or I can hand it up to Your Honor.

3 **THE COURT:** I don't have a clerk at this moment. This
4 young lady here who just came forward -- here we go. Now I've
5 got somebody. Thank you.

6 What shall I do?

7 **MR. VAN NEST:** We had some discussion about this
8 earlier. They have an exhibit, which I'm showing you there,
9 which is written by a man named Makowski. Mr. Makowski was at
10 Apache Software Foundation when he wrote this. He was never
11 disclosed on any Rule 26 whatsoever. This document was
12 produced by Apache. Oracle subpoenaed Apache back in 2011.
13 They received the document from Apache. They never followed
14 up, they never asked to take a deposition --

15 **THE COURT:** Just a second. Is that true, that you are
16 trying to put a witness on who was not disclosed under Rule 26?

17 **MR. BICKS:** That is not correct, Your Honor.

18 **THE COURT:** Show me the initial disclosure or
19 supplement thereto that disclosed this witness.

20 **MR. BICKS:** So this is actually Google's October --
21 disclosure from --

22 **THE COURT:** I asked for yours first.

23 **MR. BICKS:** Well, they disclosed the people from
24 Apache and then we do a *me*, too and say each side buys into the
25 other's disclosures. This fellow is a Google employee.

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1 **THE COURT:** Was he closed by Google?

2 **MR. BICKS:** Yes.

3 **THE COURT:** Is that true?

4 **MR. VAN NEST:** I don't believe so.

5 **THE COURT:** Well, take a look at whatever document it
6 is Mr. Bicks has got there.

7 **MR. BICKS:** And so the Court knows what I'm referring
8 to, there is a disclosure by Google where they identify all
9 employees or former directors, officers of Apache, and this
10 individual was a former director of Apache, and as
11 Your Honor -- I think we've discussed. He works at Google.
12 He's been at Google for -- since July of 2010, and he was --
13 he's been subpoenaed to testify on this document, which
14 Your Honor knows about.

15 **THE COURT:** I know the document and I think it's a
16 potentially-important document in the case, but I tell the
17 lawyers from day one, you must disclose under Rule 26.

18 **MR. BICKS:** Yes. And what I'm saying, Your Honor, is
19 that this individual -- these -- this group of folks, all the
20 folks from Apache have been disclosed by Google going back to
21 2011.

22 **THE COURT:** Well --

23 **MR. VAN NEST:** Your Honor, he was never disclosed by
24 name. There's a --

25 **THE COURT:** How did you -- see, here's the problem. I

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1 hate it when the lawyers do this.

2 What made you think that your disclosure was good enough
3 whenever you did a group disclosure?

4 **MR. VAN NEST:** We disclosed the Foundation, including,
5 but not limited to, Geir Magnusson. So we disclosed an
6 individual whom they could have deposed and didn't. That's not
7 this individual. They had the document. It was obtained from
8 a third party, from Apache. Neither side disclosed this
9 witness, Makowski. Neither side asked for his depo. Neither
10 side took a depo. He was never on a disclosure that Oracle
11 filed ever from day one, last trial, this trial, at any time.
12 And now they want to jam it in --

13 **THE COURT:** It doesn't matter about the last trial so
14 much. They could have updated it between the last four years.
15 There an opportunity to say *here is our supplement to our Rule*
16 *26.*

17 **MR. VAN NEST:** That's right. We both supplemented,
18 and he has never been on any supplemental ever. I object to
19 that slide because it comes in only through him.

20 **THE COURT:** What else do you have to say?

21 **MR. BICKS:** My point, Your Honor, is that he's -- this
22 witness -- this has been disclosed by them. And --

23 **THE COURT:** That disclosure doesn't count. I would
24 have ruled that disclosure bogus and void from day one. If
25 that's what you're relying on -- look, if you didn't list him

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1 by name someplace, at least for opening purposes, you can't use
2 this. You can't spring this on me at the opening statement
3 stage.

4 **MR. BICKS:** But, Your Honor, just so we're clear, the
5 26 disclosures are the ones that we've discussed, but he was
6 identified when we were exchanging witness lists back in April,
7 and we have been discussing this document in court for like the
8 last -- over the last month. So everyone has known about
9 him --

10 **THE COURT:** Okay. But was he disclosed under Rule 26
11 like the rule requires, like the Federal Rules of -- this is
12 not my rule. This is the national rule. It says you've got to
13 do it and you can supplement for good cause. You probably
14 would have had good cause to supplement.

15 I'm not going to make a final ruling on whether you can
16 use this testimony or this document. I'm going to say you
17 cannot use it in the opening. I'm going to need more time, and
18 I'm going to make you lawyers brief it, and here's some of the
19 things that would be useful to me.

20 To find out every instance in which Google has gotten away
21 with something like you're trying to get away with because I'm
22 not going to let them have it both ways. I just cannot fathom
23 the idea that you think you can make a group disclosure under
24 Rule 26. You have to identify the specific people.

25 **MR. VAN NEST:** Your Honor, that's the only issue I

1 had --

2 **THE COURT:** All right.

3 **MR. VAN NEST:** -- on the opening slides --

4 **THE COURT:** I'm going to make the same ruling on
5 your -- you cannot use that testimony on your opening about
6 transformative because that was an argumentative question. I
7 may not let you even use it period, but I haven't heard your
8 argument on it yet. That's my tentative ruling.

9 Tell me what your argument is.

10 **MR. VAN NEST:** Here's the thing, Your Honor. This is
11 no different than their asking our witnesses whether Android is
12 commercial, whether APIs are creative.

13 Bob Lee -- they have a slide which -- from Bob Lee, who is
14 a Google employee, where he says, *We took the good stuff from*
15 *Java*. That's also a question where it's taken out of context.

16 The reason -- Mr. Barr has been at Sun for almost 20
17 years. He was designated by them as a witness. He is a senior
18 principal technologist. He is out there writing a blog
19 congratulating Android. He says on the blog, "I still applaud
20 Google for the effort. The mobile industry is in the midst of
21 a major shift and Android is an embodiment of that shift."
22 That was the blog that he posted.

23 **THE COURT:** I'm not saying he can't use the blog.
24 What I'm saying is that snippet about transformative where the
25 witness himself says *what do you mean by transformative* and --

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1 it's just taking -- like *commercial* is a normal word, but
2 *transformative* is one that has possibly special legal meaning
3 and is not a normal word, and I just think you -- the witness
4 never gave a definition of what he meant by it.

5 **MR. VAN NEST:** Well, he did, though --

6 **THE COURT:** It's more argumentive than it is
7 probative.

8 **MR. VAN NEST:** He did though, Your Honor. He did in
9 the sense that he was asked -- he asked the examiner to clarify
10 what it means, and the examiner said:

11 "In other words, did it change the status quo in a very
12 significant way when it came out?

13 "A The status quo of the mobile industry, yes.

14 "Q. Was Android transformative?

15 "A. I think I already answered that, that I believe in
16 some ways, yes."

17 He asked for clarification and he got it. This is no
18 different than the quote they have from Bob Lee on *the good*
19 *stuff*. That's the same sort of thing. He wants to know what
20 does good stuff mean, what are we talking about. I'm not sure
21 why transformative is different from saying *is this the good*
22 *stuff, is this the good stuff from Java* or different from
23 saying *is this creative, is an API creative*. It's the same --
24 it's the same point for all of them, and there ought to be --
25 if they're going to get to get up and put in their opening Bob

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1 Lee, the good stuff from Java, an expert saying *yeah, it's*
2 *creative*, I don't know why Mr. Barr, who is a witness they
3 designated and has been at Sun for 20 years, can't be on the
4 same plane. It's the same sort of thing, both sides.

5 **MR. BICKS:** Your Honor, some of that is just frankly
6 not accurate. This individual was not designated. He's not a
7 senior executive. He expressly says it in his deposition,
8 Transformative is a really vague term so I'm not sure if I can
9 even answer that."

10 As the Court knows better than the parties, the definition
11 of *transformative* in this case is a specific phrase that is
12 very complex and very nuanced. That's a very different issue
13 than asking somebody who actually put in an email when they
14 described these packages that they were good stuff, normal
15 English language, and he was asked are they the good stuff and
16 he said they're the good stuff. That testimony was actually
17 admitted at the last trial.

18 So words like *good stuff* and *commercial* are very different
19 than this definition, which is complex, where a witness already
20 said --

21 **THE COURT:** Are you going to use *good stuff* in your
22 opening statement?

23 **MR. BICKS:** Yes. And he -- I thought we were okay
24 with me doing that.

25 **MR. VAN NEST:** I think they should either both be in

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1 or both be out. They're on the same plane. That's what I told
2 counsel last night. They should either both be in or both be
3 out. It's not fair to let him put someone up on that and not
4 allow me to show a very direct and clear response from a
5 witness who asked for clarification, got it, and made the
6 statement.

7 This is --

8 **THE COURT:** Who said *good stuff*?

9 **MR. BICKS:** A fellow named Bob Lee.

10 **THE COURT:** He is at which company?

11 **MR. BICKS:** He is at Google, Your Honor, and he was
12 one of the lead platform designers here, and it was a pretty
13 straightforward question, Your Honor.

14 **THE COURT:** What factor does good stuff go to? Factor
15 3?

16 **MR. BICKS:** Yeah. It's important. It's actually,
17 frankly, from my view in terms of helping a jury understand
18 this, simple stuff like that I think can be easier to
19 understand than some of the complex technical language.

20 **THE COURT:** Well, did he go further to say that the
21 implementing code was the bad stuff?

22 **MR. BICKS:** I don't think he was asked that, Judge.
23 He was asked a pretty straightforward question:

24 "Would you agree that the Java APIs that Android supports
25 are good stuff from Java?"

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1 "Answer: Yes."

2 This was played at the trial.

3 **THE COURT:** Look, I thought you said it was omitted at
4 the last trial.

5 **MR. BICKS:** No. It was played.

6 **THE COURT:** Admitted. I thought you said *omitted*.

7 **MR. BICKS:** No, no, no. Admitted.

8 **THE COURT:** All right. You know, that is worth
9 something, but I can't -- maybe there wasn't an objection last
10 time.

11 **MR. VAN NEST:** There was. I mean, this is -- the *good*
12 *stuff* was in an email that Mr. Lee didn't even write, and he is
13 asking for the same kind of clarification that Mr. Barr did.
14 He has asked okay -- he's read an email that someone else
15 wrote:

16 "They take good stuff from Java into their own little
17 Ecosystem.

18 "What good stuff from Java are you referring to there?

19 "I'm not sure," says the witness.

20 "Would you agree that Android took the good stuff from
21 Java?

22 "Object. Could you be more specific?

23 "Yes. Would you agree" -- question, "Would you agree that
24 Android uses Java APIs?

25 "Answer: It certainly supports certain Java APIs.

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1 "Would you agree that the Java APIs that Android supports
2 are good stuff from Java?

3 "Object to form.

4 "Answer: Yes."

5 He's also asking for clarification throughout on what *good*
6 *stuff* means. So these two witnesses are on an equal footing,
7 and I, frankly, don't care whether they're both in or both out.

8 **THE COURT:** Are you going to read to the jury the
9 pre-instruction that I'm going to give on *fair use*?

10 **MR. BICKS:** I'm quoting some of it, yes. But I gather
11 they are, too. I'm not going to be going over the top with it,
12 Your Honor. I get your direction. It's --

13 **THE COURT:** They're both -- Mr. Van Nest has a point.
14 *Good stuff*, that's like *What do you keep in your liquor*
15 *cabinet? Where do you keep the good stuff?* As opposed to the
16 *what kind of stuff*.

17 **MR. VAN NEST:** The question right before it,
18 Your Honor -- his answer is -- he's asked:

19 "Would you agree that Android took good stuff from Java
20 into its own private Ecosystem?

21 "Answer: I would object vehemently. It's Apache
22 licensing so it's completely free so it didn't take anything
23 into a private Ecosystem."

24 **THE COURT:** Who said that, the lawyer?

25 **MR. VAN NEST:** No. This is Mr. Lee, the witness.

1 This is what they're not showing.

2 Then he is asked:

3 "Would you agree that Android took good stuff from Java?

4 "Answer: Could you be more specific. What do you mean?

5 "Yes, okay, I'll be more specific."

6 **THE COURT:** I've got a good solution for both of you.
7 Both of you get to use it, but you have to have the full page
8 or so of that kind of argumenting back. You can't just take a
9 snippet. You got to put in all of that that Mr. Van Nest read
10 and then you've got to put on -- about transformative, you've
11 got to start back there with the questions about Apple, and
12 then where he says *that's a vague term, what does that mean,*
13 you've got to put all that down, water it down with all of
14 those -- the true transcript as opposed to the snippet, and
15 then you need on the Van Nest side -- you've got to say *now,*
16 *the judge will instruct you on what the term transformative*
17 *means.* And then you've got to read it.

18 Somewhere in your opening, you've got to read the entire
19 paragraph on what *transformative* is so that it will -- the
20 scales will fall from the eyes of the jury and they will see
21 that the definition that you gave them in the depo was not
22 quite the same one that I'm going to give them.

23 So if you think it's still worth using after all that, you
24 can go for it. And you've got to read factor 3 to the jury so
25 that they can see that the phrase *good stuff* does not appear

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1 anywhere in the definition and then -- so there. That way
2 there won't be any misleading of the jury by either side.

3 **MR. VAN NEST:** I think you just shortened up the
4 openings there a little bit, Your Honor. Thank you.

5 **THE COURT:** Well, you both -- one of you can decide to
6 do it, but you've got to do the complete package.

7 **MR. VAN NEST:** We get the idea.

8 **THE COURT:** All right. What else can I help you with?

9 **MR. BICKS:** I think that's it.

10 **MR. VAN NEST:** The other thing that we should spend
11 just a minute on, Your Honor, we have now started to exchange
12 deposition designations, and we have a couple of sets to hand
13 up to Your Honor where we need your guidance.

14 **THE COURT:** Fine. Hand them up.

15 **MR. VAN NEST:** I would ask Mr. Mullen to step forward.
16 That's the other thing we can spend time on briefly.

17 **THE COURT:** All right. Is there a packet?

18 **MR. MULLEN:** Good morning, Your Honor. Three packets,
19 actually.

20 **THE COURT:** When will these be read to the jury? When
21 are they going to come up?

22 **MR. VAN NEST:** I don't think they'll come up -- I'm
23 expecting that we won't do any evidence today. If we ended up
24 with a few minutes today, we'd read Mr. Ellison, but apart from
25 that, they won't come up until Wednesday at the earliest,

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1 Your Honor.

2 **THE COURT:** All right.

3 **MR. VAN NEST:** So I wouldn't expect any of them to be
4 done tomorrow or today. Probably Wednesday at the earliest.

5 **THE COURT:** You gave me four and not three.

6 **MR. MULLEN:** There is trial testimony and a deposition
7 transcript for Mr. Ellison, Your Honor.

8 **THE COURT:** All right.

9 **MR. MULLEN:** Those both go together. And that
10 actually, if I could, I just wanted to raise an issue that the
11 parties have had so far in dealing with designations. It came
12 to a head with Mr. Ellison's deposition designations. He is
13 unavailable this week. That's okay. We're going to play his
14 deposition, and we designated the testimony that we wanted to
15 play.

16 Oracle has added a whole bunch of designations that
17 they're calling completeness, but they really don't go to
18 completeness at all. I think completeness is a line or two of
19 deposition testimony. They have several lines and sometimes
20 full pages that they're calling completeness.

21 It's an issue with Mr. Ellison's deposition and it's also
22 an issue with several other witnesses whom we have designated,
23 and we would like to kind of cut that off at the head before it
24 gets --

25 **THE COURT:** To give you -- the kind of thing that I

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1 just said that Mr. Van Nest would have to read about Apple and
2 iOS and *transformative* and all of that would be required under
3 the Rule of Completeness. On the other hand, things that are
4 sideswipes and you don't really need to get to the meaning of
5 what the testimony you want to offer, that's not Rule of
6 Completeness.

7 So do you have something to say? What is your name?

8 **MS. VON DER AHE:** Good morning, Your Honor. Christine
9 Von der Ahe on behalf of Oracle.

10 We believe the completeness designations we did for Oracle
11 are completely within the guidelines you set forth.

12 **THE COURT:** I will have to look at it unless you too
13 think you could look at it again and agree. What I usually
14 just say is *in/out*. Two letters, three letters and then I
15 don't give long explanations. Sometimes I give no explanation.
16 I just say *in/out*. When I hand it back, you'll see that's the
17 only practical way to do it. And I will see if I can get
18 through -- what is the -- let me put these in the order that we
19 need them first. You want Ellison first; right?

20 **MR. MULLEN:** Yes, Your Honor.

21 **THE COURT:** I will put him on the top of the stack.
22 Who would be next?

23 **MR. MULLEN:** I think Mr. Duimovich, Your Honor.

24 **THE COURT:** I will take him next. I will do them in
25 that order. Great. Okay.

1 **MS. VON DER AHE:** Thank you, Your Honor.

2 **THE COURT:** I want to come back to the -- the memo
3 from the guy at Apache. Right now I'm only ruling that you
4 can't use it in the opening. I'm not saying it won't come in
5 at trial. And it disturbs me that this was not -- they were
6 not disclosed, but -- so I want -- I do not want someone to
7 have it both ways and be using this as a gimmick.

8 So we're going to have a further argument over this before
9 it gets to the stage where you're putting on your case. So we
10 have some time. But if I'm going to be this hard on Oracle,
11 which is what the rule calls for, Mr. Van Nest, I'm going to be
12 just as hard on Google. So when the day comes that you need
13 some flexibility under Rule 26, too bad for you.

14 So you need to be -- this is usually the kind of thing
15 good lawyers work out. But if I've got to do it by the rule,
16 I'm going to be just as hard on you. And when I say *hard*, I'm
17 not being -- I'm just doing what the rule says.

18 **MR. VAN NEST:** Understood, Your Honor. Thank you.

19 **THE COURT:** All right. Okay. Shall we bring in our
20 venire?

21 **THE CLERK:** They just told me it's five minutes.
22 They're printing out the list and they will be here in five
23 minutes.

24 **THE COURT:** All right. Those of you in the back of
25 the room, I think we're going to need those seats. And I'm

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1 sorry that we don't have more space in here, but after we get
2 the jury selected, we'll have more space than we need.

3 We'll take, let's say, a five-minute break and get the
4 jury all in here and then we'll get started.

5 (Recess taken at 8:01 a.m.)

6 (Proceedings resumed at 8:26 a.m.)

7 **THE COURT:** Everyone be seated. And welcome to all of
8 you. It's a big crowd today. Thank you for coming out. And
9 the first order of business is for the clerk to call the roll
10 and make sure know who's here and then to -- before doing that,
11 to swear you in.

12 So I'm going to turn things over to Dawn Logan, who will
13 do that part.

14 **THE CLERK:** Thank you, Your Honor. All right, when
15 you hear your name, please just acknowledge that you are here.

16 (Roll call taken)

17 **THE CLERK:** Anybody here who I did not call? Everyone
18 has been called.

19 **THE COURT:** Somebody raised their hand.

20 **THE CLERK:** Your name?

21 **PROSPECTIVE JUROR AGUILAR:** Manuel Aguilar. I.

22 **THE CLERK:** I don't have *Aguilar* on the list. The
23 jury person staff is here to take you back to the jury office.

24 **THE COURT:** Anybody? Okay.

25 **THE CLERK:** I will administer the oath, Your Honor.

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1 I'm going to administer an oath to all the perspective jurors,
2 and I would ask that you please stand, raise your right hand to
3 follow the oath.

4 *Prospective Jurors Sworn*

5 **THE CLERK:** Thank you. Please be seated.

6 **THE COURT:** All right. Welcome again to your U.S.
7 District Court for the Northern District of California, which
8 runs all the way from Monterey up to the Oregon border and
9 about halfway into the state. So welcome to you and thank you
10 for coming out on this misty May morning.

11 We're going to start things off right by having the case
12 called and asking counsel to make their appearances.

13 Dawn, would you please call the case.

14 **THE CLERK:** Of course, Your Honor. Thank you. It's
15 Civil 10-3561-WHA, Oracle America, Inc. vs. Google, Inc.

16 Counsel, please go ahead and state your appearances for
17 the record.

18 **MR. BICKS:** Thank you, Your Honor. Good morning,
19 everyone. My name is Peter Bicks. And I would like to
20 introduce you to some folks at my table here.

21 This is Matt Sarboraria and Georges Saab. They are both
22 with Oracle. This is my colleague, Gabe Ramsey, and over to
23 the corner over here, Lisa Simpson and Annette Hurst and then
24 Mark Phillips.

25 **THE COURT:** All right.

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1 **MR. BICKS:** Thank you, Your Honor.

2 **THE COURT:** Thank you, Mr. Bicks.

3 And?

4 **MR. VAN NEST:** Good morning, Your Honor.

5 Good morning everyone. My name is Bob Van Nest from Keker
6 & Van Nest, and I'm here on behalf of Google, and our Google
7 representative is Katherine Lacavera from Google. And with me
8 at counsel table are Christa Anderson, Dan Purcell, Matthias
9 Kamber, Michael Kwun, and Mike Tiktinsky.

10 **MR. VAN NEST:** Thank you, Your Honor.

11 **THE COURT:** Thank you. It will take a while to get
12 all the names of the lawyers down, but eventually those of you
13 selected to serve on the jury will know who's who.

14 But just to give you a very brief summary, this side of
15 the room is Oracle America, Inc., Oracle America Inc. This
16 side of the room is Google, Inc. Google. And those are the --
17 then you met the lawyers. We'll get their names down in due
18 course. So there we go.

19 I need to do something right off the bat and give you a
20 direct order. I hate to give a direct order to jurors because
21 I have so much respect for the jury and the jury system and
22 every one of you individually.

23 This is a high profile case. There has been a lot of
24 publicity about this case, and both sides have been waiting
25 months, even more than that, for their day in court. And so

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1 have the newspapers and the magazines.

2 And my direct order to you is you may not, you must not,
3 you cannot go out and do any research or, to use a bad phrase
4 in this case, Google anything having to do with this case. If
5 you do, it will be a direct violation, and I have to hold you
6 in contempt. I would hate to do that.

7 But there's a good reason for this order, and that is that
8 whoever is selected to serve has to decide the case based on
9 the evidence here in the courtroom and not upon any stuff,
10 including propaganda, that you hear on the Internet or see on
11 the Internet or read in the newspapers. This case has to be
12 decided on what's presented here under the Rules of Evidence
13 and not on anything, any search outside the courtroom.

14 Similarly, you cannot talk with anyone about the case,
15 even each other. Those of you who are selected to serve on the
16 jury will have a duty to talk about the case at the end of it
17 during deliberations, but not before that.

18 So you can't talk with your loved ones, other than to say
19 you're serving on this case. You could tell them the name of
20 the case, but no talking about the case, even with your loved
21 ones.

22 So to come back to the -- I just know how half of you are
23 so into your cell phones and trying to Google stuff and go on
24 Facebook. You cannot do any of that. You cannot put on
25 Facebook or your social media page that you're on this case as

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1 a juror or even being considered as a juror. You cannot do
2 that. And that's because you would start getting comments from
3 your friends or maybe friends of your friends: *Oh, that's*
4 *great; oh, that's terrible.* Whatever they would say. You
5 cannot do that.

6 Now, part of the good news of this is that these excellent
7 lawyers on both sides have both agreed with the Court that they
8 will not try during -- what sometimes happens in jury selection
9 is to do searches on you, so they're not going to be going out
10 while you're being considered to serve on the jury and
11 searching your background on social media. So you're safe
12 there. Until the very end of the case, then you and the
13 lawyers and everyone in the world can do all the research they
14 want to do once the verdict is in.

15 So they will then go back, maybe, and look and see
16 everything that you wrote, make a motion for a mistrial if you
17 did something -- some misconduct. I don't know. But they can
18 do it then, but they've agreed not to do it until that point,
19 and you can't do it either, but once you're free from your jury
20 service, then of course you can go -- you can hold a press
21 conference, if you want. You can write a book about the case.
22 I don't care. But you can't do it before that.

23 Now, the lawyers, these excellent lawyers, have both
24 agreed that they will not be doing that, but I cannot promise
25 you about the press. Somewhere in the room we've got members

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1 of the press and we've got members of the public, and those
2 people who have nothing to do with the lawyers presenting the
3 case, they can Google you all day long if they want.

4 So at some point, if you know how to adjust your privacy
5 settings on your Facebook, if you have that, you might want to
6 do that. But that's up to you.

7 I can't control the press. They're not subject to any of
8 my orders, and if they want to look you up and see what you've
9 said or whatever, that's their right, and they will not be
10 restricted in any way, but if you want to give yourself more
11 privacy, you can adjust your privacy settings on Instagram or
12 whatever, one of those Twitter -- whatever service that you
13 particularly like.

14 I think the world of jurors, but I have to tell you, I'm
15 deadly serious about this. If I find out that you have
16 violated the Court's order and done research on the case or
17 made comments on Facebook or anything else, it will be contempt
18 of court and you will put me in a terrible position of having
19 to sentence you to some kind of community service or whatever
20 and make you -- you don't want to put me in that position.
21 Please honor this. Please honor this. The temptation, because
22 it is a high-profile case, will be enormous and you must resist
23 it and not do it. All right. Enough said on that.

24 Okay. We're going to go now to what are we here for
25 today. We are here to select a jury. We need 10 of you to

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1 serve, so we've a lot more than we need, and we will spend
2 probably up until close to 11:30 or noon on this jury selection
3 process. And the whole point is to ask you questions and to
4 see if you would be fair and impartial to both sides and follow
5 the law and the instructions that I will give you about the law
6 and then be a good conscientious juror and decide the case.

7 So that's what we will be doing. And rather than explain
8 it to you, you just have to see how it unfolds. That's the
9 best way to do it.

10 The first item of business, I want to get rid of anybody
11 who's sick and can get the rest of you contagious. If you have
12 the flu, a bad hacking cough, bronchitis, you've got to raise
13 your hand right now. Come up here. I'm going to interview.
14 Remember, all of you are under oath. I rarely have people who
15 try to get out of jury service by claiming they're not --
16 they're sick when they're not.

17 Right here. Right here. Go up to the microphone.

18 Tell me your name, please.

19 **PROSPECTIVE JUROR GOLD:** Mark Gold.

20 **THE COURT:** Who?

21 **PROSPECTIVE JUROR GOLD:** Mark Gold.

22 **THE COURT:** Your situation?

23 **PROSPECTIVE JUROR GOLD:** I have been having stomach
24 problems.

25 **THE COURT:** What?

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1 **PROSPECTIVE JUROR GOLD:** I have stomach problems.

2 **THE COURT:** Are you contagious?

3 **PROSPECTIVE JUROR GOLD:** I don't know. I have trouble
4 going to the bathroom.

5 **THE COURT:** Right now? I mean, currently?

6 **PROSPECTIVE JUROR GOLD:** Currently, yes.

7 **THE COURT:** I'm going to excuse Mr. Gold, unless I
8 hear an objection.

9 **MR. VAN NEST:** No objection, Your Honor.

10 **MR. BICKS:** No objection.

11 **THE COURT:** Go back to the jury assembly room and tell
12 them what happened.

13 **PROSPECTIVE JUROR GOLD:** Thank you, Your Honor.

14 **THE COURT:** Thank you. Good luck.

15 Anyone else? The gentleman back there. You have to come
16 up here. I can't hear you back there. It's not going to be
17 that easy. You have to come all the way up here, stand in
18 front of all these people, and tell me how sick you are.

19 First thing is what is your name?

20 **PROSPECTIVE JUROR TYRRELL:** I'm James Tyrrell.

21 **THE COURT:** Mr. Tyrrell, what is your situation?

22 **PROSPECTIVE JUROR TYRRELL:** I'm not ill, Your Honor,
23 but I'm having a difficult time hearing. I'm having trouble
24 with my hearing. I haven't been able to get hearing aids yet
25 so I barely have understood any information.

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1 **THE COURT:** Who in the front row would like to switch?
2 He is way back in the back. Who would raise their hand and sit
3 back in his spot for a moment?

4 Thank you, sir. You go back there, and you go sit up
5 there, Mr. Tyrrell. We will make sure you can hear okay.

6 Anyone else? Come on. Nobody else? Out of 71 people,
7 that's great. See, you're so willing to serve that this is why
8 I love juries. Only one person out of 71. Okay.

9 So next step, this is going to -- let me tell you how long
10 this case will be. Probably it will go to June 10th. I don't
11 think it will go any longer than June 10th and it probably will
12 go a little less than June 10th. And all of you should have
13 been cleared through that length of time already.

14 So whenever you get called forward, if you have some
15 hardship issue, you've got to bring it up. But we will be in
16 session every single day that's a holiday, except I'm going to
17 probably give you off May 20, Friday May 20. And the other
18 days we'll be in session. This week five days, next week four
19 days, the following week five days, and so forth.

20 So that's the drill. And the jury -- the 10 members of
21 the jury have to be here at 7:45 each morning. 7:45. And then
22 they get to go home at 1:00. 1:00 p.m. 1:00 p.m. Except when
23 they start to deliberate, then usually the juries decide they
24 want to stay later in the day because often they can decide the
25 case right away and not have to come back the next day. It's

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1 up to them. They can stay as late as they want. Midnight if
2 they want. We will always be here if they want to go to
3 midnight. No one has done that yet, but they have gone to
4 7:00 p.m. So it's up to them.

5 So that's going to be our situation on the timing. You
6 have to be here at 7:45 and you have to be -- why is that?
7 Some of you think well -- I bet you have never served on a
8 jury. You think *Oh, if I'm a little late, I can just look at*
9 *somebody's notes*, like high school. No. You have to be here
10 to see and hear every single word said by every single witness
11 for yourself. You can't rely on somebody else's notes.

12 So on those rare occasions when somebody is sick -- not
13 sick. They're just late. Not sick. They're just late. We
14 sit here counting the dots on the ceiling. Everybody in the
15 jury box, we're just counting the dots on the ceiling in total
16 stoney silence until you arrive, so you don't want to put us in
17 that position. You've got to be here at 7:45.

18 Once you get selected, there is no such thing as to say
19 *oh, I forgot to tell you this*. You've got to tell us
20 beforehand because it's like the Army. If you get drafted,
21 you're in for the duration. You don't get out. You can't say
22 *oh, I forgot to tell you this*. Okay.

23 All right. Again, I want to thank all of you. This is
24 such a -- it's wonderful that we have juries that will come in
25 from all over the district and decide these cases and just --

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1 it's wonderful.

2 So what is this case that we're talk about? Remember, I
3 said this side of the room is Oracle America. I'm just going
4 to call it Oracle. And over here is Google. These are large
5 companies in America, and they are here with a disagreement and
6 the jury will decide the disagreement. Not the judge; the
7 jury.

8 And I have a very short statement here that I'm going to
9 read to tell you what the case is about. Why am I doing this?
10 Well, possibly once you hear the statement of the case, there
11 will be something about your background that would cause you to
12 be biased. For example, if you currently work for one of these
13 companies, that's probably not good. We probably wouldn't be
14 allowed to keep you on the jury. So here we go.

15 "The plaintiff in this case is Oracle America, Inc.,
16 formerly known as Sun Microsystems. And the defendant is
17 Google, Inc."

18 Let me say that again so it will sink in.

19 "The plaintiff in this case is Oracle America, Inc.,
20 formerly known as Sun Microsystems. And the defendant is
21 Google, Inc. This is a case involving claims of copyright
22 infringement."

23 Copyright. Copyright infringement. That's what the case
24 is about.

25 "In November 2007, Google announced a new operating system

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1 called Android." Android.

2 "November 2007, Google announced a new operating system
3 called Android which has been used in devices such as
4 smartphones and tablets. Android uses certain parts of a
5 copyrighted software platform called Java SE."

6 You're going to find out that SE standards for *standard*
7 *edition*. Right? Am I right about that?

8 **MR. VAN NEST:** Yes, you are, Your Honor.

9 **THE COURT:** So I'm going to repeat that sentence.

10 "Android uses certain parts of a copyrighted software
11 platform called Java SE owned by Oracle."

12 It used to be owned by Sun Microsystems, but Sun
13 Microsystems was acquired by Oracle America or by Oracle and
14 now called Oracle America, Inc., so Java SE owned by Oracle.

15 "Oracle contends that Android's use of this material
16 infringes Oracle's copyrights. Google contends that Android
17 does not infringe these copyrights because its use is a, quote,
18 fair use, close quote under the law."

19 Now later on I'll give you a definition of that term *fair*
20 *use*. It is in the Copyright Act it's a thing called *fair use*
21 and I'll have to explain that to you later.

22 So let me read this paragraph again.

23 "Oracle contends that Android's use of this material
24 infringes Oracle's copyrights. Google contends that Android
25 does not infringe these copyrights because its use is a fair

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1 use under the law. Oracle also seeks billions," billions,
2 that's with a B. "Oracle also seeks billions of dollars in
3 damages. Google denies that Oracle is entitled to any
4 damages."

5 Okay. That's what the case is about.

6 So the issues that the jury will have to decide will be is
7 it a fair use. Okay? Number one. And number two, if it's not
8 a fair use, then what are the damages. And was it willful.
9 There may be a few other issues that the jury would have to
10 decide that I can't think of right now, but that's kind of what
11 the jury is going to have to be deciding for us.

12 Okay. So did everyone here -- did you in the front row,
13 did you hear what I just said?

14 **PROSPECTIVE JUROR TYRRELL:** I'm struggling a little
15 bit, but it's better, yes, thank you.

16 **THE COURT:** What we are going to do now is pass out --
17 are my troops ready with the passing out thing? Where is that?
18 I don't even see it in here.

19 **THE CLERK:** We have them in the back.

20 **THE COURT:** They are going to wheel in some
21 questionnaires. It is a very short questionnaire, but we've
22 decided this will go faster if you answer a one-page
23 questionnaire, and we're going to give you 15 minutes to do
24 that. So we'll give you specific instructions as we go along
25 here, but the first thing you've got to do is get your hands on

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1 a questionnaire and a pencil and a clipboard so it will be easy
2 for you to write.

3 While they're getting organized, you will get one -- it's
4 a front and back of one page. It's not that many questions.
5 But you've got to read each one to yourself and answer it
6 truthfully. Remember that you are under oath. And then on the
7 back side, there are the possible witnesses in the case, and
8 you need to circle anybody that you think you know.

9 And it's just go to be easier if we all sit here, and
10 we'll give you 15 minutes of silence to answer the questions.
11 And then when you finish answering the questions, just hold on
12 to your copy of the clipboard and the questionnaire. Don't try
13 to pass it down to the end. Just hold it in your lap.

14 Raise your hand if you did not get a questionnaire. Okay.

15 Somebody in the front row just left the courtroom. What
16 was going on there?

17 **MR. TOTH:** He went to the restroom.

18 **THE COURT:** Does he have a questionnaire?

19 **MR. TOTH:** Yes.

20 **THE COURT:** Okay. You have about 15 minutes. When it
21 looks like everyone is staring up toward me, then we'll resume.

22 (Off the record at 8:54 a.m.)

23 (On the record at 9:02 a.m.)

24 **THE COURT:** Anybody still working on the
25 questionnaire, raise your hand. We will give you all the time

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1 you need.

2 (Off the record at 9:02 a.m.)

3 (On the record at 9:03 a.m.)

4 **THE COURT:** How about now? Anyone still working on
5 it? I still have one in the front row. Do you still need more
6 time?

7 **PROSPECTIVE JUROR:** No. I'm done.

8 **THE COURT:** Anyone else still working on your
9 questionnaire? Please raise your hand. Okay. Please go
10 ahead. We'll wait.

11 (Off the record at 9:03 a.m.)

12 (On the record at 9:04 a.m.)

13 **THE COURT:** Done? Anyone else still need time? It
14 looks like you're all done.

15 Here's the thing. Just hold on to your questionnaire.
16 Make sure you signed it at the bottom and put on the date.
17 Today's date is May 9. Be sure you signed it at the bottom
18 under penalty of perjury. And just hold it in your lap until
19 we know if you're called forward or not, and then at that time,
20 I will tell you what to do when you're called forward.

21 So we're going to now turn to exactly that. The clerk
22 will now call forward 16 of you.

23 And, counsel, I just want to be clear. You see we have
24 two additional seats to accommodate 16. Do you see that?

25 **MR. VAN NEST:** Yes.

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1 **THE COURT:** The Seat No. 1 is the temporary seat
2 nearest the court reporter, and then it goes across to No. 8
3 and then we start with 9. The temporary seat goes across to
4 16. Understand?

5 **MR. BICKS:** Yes.

6 **MR. VAN NEST:** Understood.

7 **THE COURT:** Let's start calling forward some of our
8 good people.

9 **THE CLERK:** Cary Heil, H-E-I-L.

10 **THE COURT:** All right. Come forward. Don't call any
11 more names yet. I want to show everybody how the drill works.

12 I'm sorry. See how crowded it is? It takes you --
13 naturally, the first person called would be at the very end;
14 right?

15 All right. Welcome. Come forward, if you would, to one
16 of these two podiums. And your name again?

17 **PROSPECTIVE JUROR HEIL:** It's Cary Heil.

18 **THE COURT:** May I see your questionnaire, please.

19 So on number -- all right.

20 Counsel, you have agreed, I believe, that -- here, counsel
21 let's make sure that we understand. Take a look at the back of
22 this form, and under your stipulation, I think I am supposed to
23 excuse Ms. Heil; correct?

24 **MR. VAN NEST:** *Acquainted with*, Your Honor.

25 **THE COURT:** Yes. But look at the back. It was

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1 circled. Wasn't that your stipulation?

2 **MR. VAN NEST:** It is, but *acquainted with* I think
3 should require just a question or two.

4 **THE COURT:** No. You all had a stipulation.

5 **MR. VAN NEST:** I think *acquainted* means knows
6 personally.

7 **THE COURT:** Wasn't the stipulation that if anyone
8 circled somebody on the back, that they were excused?

9 **MR. VAN NEST:** Right.

10 **MR. BICKS:** Yes.

11 **MR. VAN NEST:** Subject to a question about whether
12 it's the person that they're acquainted with.

13 **THE COURT:** I guess you did say that. All right.

14 On the person -- do you know Mr. Ellison personally?

15 **PROSPECTIVE JUROR HEIL:** I know -- I worked for his
16 personal accounting firm, and I know just about everything
17 about him personally. I have never met him personally.

18 **THE COURT:** All right.

19 Isn't that good enough?

20 **MR. VAN NEST:** It is.

21 **MR. BICKS:** It is.

22 **THE COURT:** All right.

23 Ms. Heil, please go back to the jury assembly room AND
24 tell them what happened. You're excused. Thank you.

25 Now, counsel, before I call the next person, on the other

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1 protocol, which is go to the end of the line, it's on Questions
2 9D or E; correct?

3 **MR. BICKS:** Yes.

4 **THE COURT:** Both of those?

5 **MR. BICKS:** Yes.

6 **MR. VAN NEST:** Yes, Your Honor.

7 **THE COURT:** All right. Okay. Let's call the next
8 name.

9 **THE CLERK:** Okay. Kelci Lowery, L-O-W-E-R-Y.

10 **THE COURT:** All right. So please come stand at the
11 lectern, Ms. Lowery. Is that your name?

12 **PROSPECTIVE JUROR LOWERY:** Yes.

13 **THE COURT:** How are you today?

14 **PROSPECTIVE JUROR LOWERY:** Good. Thank you.

15 **THE COURT:** Let's have your questionnaire.

16 **THE COURT:** Okay. So congratulations. You get to sit
17 in that first chair right over there, and just wait a few
18 minutes and enjoy the show so to speak.

19 Next name.

20 **THE CLERK:** Diana Rocha, R-o-c-h-a.

21 **THE COURT:** Who's going to be after Ms. Rocha?

22 **THE CLERK:** Judith Shattuck.

23 **THE COURT:** Let's call her too.

24 **THE CLERK:** Judith Shattuck. S-h-a-t-t-u-c-k.

25 **THE COURT:** All right. While she's coming forward,

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1 Ms. Rocha?

2 **PROSPECTIVE JUROR ROCHA:** Rocha.

3 **THE COURT:** Thank you.

4 You did look at the names on the back; correct?

5 **PROSPECTIVE JUROR ROCHA:** I did.

6 **THE COURT:** You didn't circle anybody. All right.

7 Good for you.

8 Please take the second seat.

9 And now we get Ms. Shattuck. And we'll be calling another
10 name forward.

11 Ms. Shattuck, if you will hand the clerk your
12 questionnaire, please.

13 You can take seat number three.

14 **PROSPECTIVE JUROR SHATTUCK:** Thank you.

15 **THE COURT:** Can we please keep the names coming.

16 **THE CLERK:** Okay. I have to write and do several
17 things to keep up with you.

18 Jacqueline McGrath. M-c-G-r-a-t-h.

19 **THE COURT:** And then a second name.

20 **THE CLERK:** Michael Wong. W-o-n-g.

21 **THE COURT:** All right. Mr. Wong, we've got to go to
22 Ms. McGrath first.

23 Welcome, Ms. McGrath. Let's have your questionnaire.

24 Okay. You can sit in seat number 4.

25 And, Mr. Wong, you can have seat number 5.

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1 **THE CLERK:** Marion Jacobs. J-a-c-o-b-s.

2 And Patricia Sizemore, Sizemore.

3 **THE COURT:** All right. Ms. Jacobs, is that you?

4 **PROSPECTIVE JUROR JACOBS:** Yes, sir.

5 **THE COURT:** Welcome.

6 Okay. Please have the next seat over there.

7 And then, Ms. Sizemore, please have the next seat over
8 there.

9 And?

10 **THE CLERK:** Bradley Peralta, P-e-r-a-l-t-a. And John
11 Kotlar, K-o-t-l-a-r.

12 Thank you.

13 **PROSPECTIVE JUROR PERALTA:** You're welcome.

14 **THE COURT:** I need my law clerk to come start making
15 some copies.

16 **THE CLERK:** Angie will do it.

17 **THE COURT:** We need two copies; one for each side.
18 And I'll just work with the original, all right.

19 Okay. So you say -- I'm sorry, your name?

20 **PROSPECTIVE JUROR PERALTA:** Bradley Peralta.

21 **THE COURT:** Peralta. You circled a name on the back,
22 Hiroshi Lockheimer.

23 **PROSPECTIVE JUROR PERALTA:** Yes.

24 **THE COURT:** And what do you -- what do you know about
25 that person? Because it may be not the same person. So tell

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1 us their age, something about them.

2 **PROSPECTIVE JUROR PERALTA:** I'm not sure what his age
3 is, but I went to college with his wife. And I'm friends with
4 his wife.

5 **THE COURT:** And how old would he be?

6 **PROSPECTIVE JUROR PERALTA:** Maybe in the early 40s,
7 possibly.

8 **THE COURT:** Early 40s. Do you know where he might
9 work?

10 **PROSPECTIVE JUROR PERALTA:** He works at Google.

11 **THE COURT:** He works at Google. All right. I think
12 we've got to excuse him.

13 **MR. VAN NEST:** Yes, Your Honor.

14 **PROSPECTIVE JUROR PERALTA:** Thank you.

15 **THE COURT:** So, Mr. Peralta, you're excused. Please
16 go to the jury assembly room and explain what happened.

17 **PROSPECTIVE JUROR PERALTA:** All right.

18 **THE COURT:** Okay. You're Mr. Kotlar?

19 **PROSPECTIVE JUROR KOTLAR:** Kotlar, yes, sir.

20 **THE COURT:** All right. You get to take that last seat
21 over there.

22 **PROSPECTIVE JUROR KOTLAR:** Okay.

23 **THE COURT:** Thank you.

24 And now we go to a new name.

25 **THE CLERK:** Okay. Betsy Harper. H-a-r-p-e-r.

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1 And Paul Roberds, R-o-b-e-r-d-s.

2 **THE COURT:** All right. Ms. Harper.

3 **PROSPECTIVE JUROR MS. HARPER:** Yes.

4 **THE COURT:** Welcome. And, let's see. You may have
5 that seat behind Ms. -- what's your name?

6 **PROSPECTIVE JUROR LOWERY:** Kelci.

7 **THE COURT:** Kelci.

8 And now Mr. Roberds. Am I saying your name right?

9 **PROSPECTIVE JUROR ROBERDS:** Roberds.

10 **THE COURT:** Okay. Please take the next seat.

11 **THE CLERK:** Debra Riddle, R-i-d-d-l-e.

12 Claudette Goldberg. G-o-l-d-b-e-r-g.

13 **THE COURT:** Good morning. Are you Ms. Riddle?

14 **PROSPECTIVE JUROR RIDDLE:** Yes.

15 **THE COURT:** How are you today?

16 **PROSPECTIVE JUROR RIDDLE:** Fine. How are you?

17 **THE COURT:** Excellent.

18 **PROSPECTIVE JUROR RIDDLE:** Uh-huh.

19 **THE COURT:** All right. I can't tell which one -- did
20 you say -- on number 9E, it looks like you marked it both ways.
21 Which is your final answer?

22 **PROSPECTIVE JUROR RIDDLE:** I'm not favorable. I was
23 in the beginning because I was thinking of Google's products.
24 I like Google products.

25 **THE COURT:** But I can't tell which one you answered

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1 here. On 9E it looks like you checked both boxes.

2 **PROSPECTIVE JUROR RIDDLE:** I meant to cross the top
3 one off. It should be "No."

4 **THE COURT:** It should be what?

5 **PROSPECTIVE JUROR RIDDLE:** "No."

6 **THE COURT:** It says "No, I have no strong opinion."

7 **PROSPECTIVE JUROR RIDDLE:** Right.

8 **THE COURT:** So you have no strong opinion. All right.
9 So you get to go have the next seat.

10 Thank you.

11 **PROSPECTIVE JUROR RIDDLE:** Thank you.

12 **THE COURT:** Okay. Who's next?

13 **THE CLERK:** She's right here. Ms. Goldberg.

14 **THE COURT:** Okay. You get to have the next seat.

15 Thank you.

16 Okay. Two more names.

17 **THE CLERK:** Give me just a second. Okay. Jeannie
18 Settles, S-e-t-t-l-e-s. And Szymon Perkowski,
19 P-e-r-k-o-w-s-k-i.

20 **THE COURT:** Okay. Ms. Settles, is that the way you
21 say it?

22 **PROSPECTIVE JUROR SETTLES:** Yes.

23 **THE COURT:** Please take the next seat over there.

24 **PROSPECTIVE JUROR SETTLES:** Thank you.

25 **THE COURT:** So on account of the way you answered, you

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1 do not get excused to the jury assembly room, but you do have
2 to go back and sit where you were for a moment.

3 We may or may not get to you, but there we are.

4 **PROSPECTIVE JUROR PERALTA:** Thank you.

5 **THE COURT:** Who's next?

6 **THE CLERK:** Melanie Calonsag, C-a-l-o-n-s-a-g.

7 And Ford Turping. T-u-r-p-i-n-g.

8 **THE COURT:** So, Ms. Calonsag?

9 **PROSPECTIVE JUROR CALONSAG:** Calonsag.

10 **THE COURT:** Calonsag?

11 **PROSPECTIVE JUROR CALONSAG:** Yes.

12 **THE COURT:** Please have the next seat over there.

13 Do I have anyone here from the clerk's office to do some
14 copying?

15 **THE CLERK:** Angie just walked back in.

16 **MR. VAN NEST:** Your Honor, could you please say her
17 name again. K or C?

18 **THE COURT:** C.

19 **MR. VAN NEST:** Thank you.

20 **THE COURT:** C-a-l-o-n-s-a-g.

21 **MR. VAN NEST:** Thank you.

22 **THE COURT:** So, Mr. Turping, you are in the same
23 category. You get to go sit in the back, in your seat for a
24 moment. We may or may not get to you.

25 **PROSPECTIVE JUROR TURPING:** Okay.

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1 **THE COURT:** Okay.

2 **THE CLERK:** Melissa Hines, H-i-n-e-s.

3 And Michael Owens, O-w-e-n-s.

4 **THE COURT:** So you are Melissa Hines. Welcome.

5 All right. Ms. Hines, you get to go sit in the next seat
6 over there.

7 Mr. Owens?

8 **PROSPECTIVE JUROR OWENS:** Yes.

9 **THE COURT:** Welcome. So, Mr. Owen?

10 **PROSPECTIVE JUROR OWENS:** Owens.

11 **THE COURT:** Owens.

12 **PROSPECTIVE JUROR OWENS:** Yes.

13 **THE COURT:** You didn't write the S on here. You
14 misspelled your own name.

15 (Laughter)

16 **THE COURT:** But doesn't matter. Right now you get to
17 go sit in the back in your other seat. We might get to you.
18 We might not.

19 All right. Next.

20 **THE CLERK:** Okay. David Mangels, M-a-n-g-e-l-s.

21 **THE COURT:** Where is Angie?

22 **THE CLERK:** Right here. She's waiting for the last
23 one.

24 **THE COURT:** Okay. Mr. Mangels.

25 **PROSPECTIVE JUROR MANGELS:** Mangels.

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1 **THE COURT:** You get to have that last seat.

2 Angie, please copy these. Same thing.

3 Now, the rest of you out there will probably be called --
4 not all of you, but some of you will be called forward before
5 this is all over. So you need to continue to listen very
6 carefully to all of the questions. And so there we go.

7 Now, first order of business for you 16 is to ask you
8 about hardship of serving on this case. In other words, let's
9 just go over the drill again.

10 Who remembers what time it is you've got to be here in the
11 morning?

12 **PROSPECTIVE JURORS:** 7:45.

13 **THE COURT:** 7:45.

14 Now, the lawyers will actually get here at 7:30. And I
15 will meet with them at 7:30 so we can clear away any problems
16 that might be pending so that at 7:45, or very close to it, we
17 get you out here and start with the evidence.

18 And then that may seem like it's early in the morning, but
19 then you get to go home at 1:00. We don't even have a lunch
20 break. We just have convenience breaks during the morning.
21 And at 1:00 o'clock you get to leave. So the traffic is a lot
22 better at 1:00 o'clock. A lot of advantages to this schedule.

23 But every now and then somebody has a hardship meeting
24 this schedule. So I need to listen to what your hardship issue
25 is if you have one. Maybe you don't. I don't know.

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1 So do we have the microphone ready to go?

2 **THE CLERK:** Yes.

3 **THE COURT:** Raise your hand if it would be a hardship
4 to serve on this case. Remember you could be here as late as
5 June 10. I think it will be done a little sooner than that,
6 but we can't be sure. And you need to be clear the decks all
7 the way through June 10.

8 So raise your hand if you want to ask for hardship. Okay.
9 Ms. -- don't tell me. Ms. Lowery.

10 **PROSPECTIVE JUROR LOWERY:** Yes.

11 **THE COURT:** We need to give you the microphone.

12 Okay. What's your issue?

13 **PROSPECTIVE JUROR LOWERY:** Uhm, I do not have a car.
14 And I live about 45 minutes away. So the commute would be me
15 having to take the bus, and it would be very difficult.

16 I'm also currently enrolled in summer semester classes
17 through the Santa Rosa Junior College. And my current semester
18 that I'm in now would continue, I think, through the beginning
19 of the trial.

20 **THE COURT:** You mean you're taking classes now?

21 **PROSPECTIVE JUROR LOWERY:** Yes.

22 **THE COURT:** Are you missing classes today?

23 **PROSPECTIVE JUROR LOWERY:** No.

24 **THE COURT:** What time of day are your classes?

25 **PROSPECTIVE JUROR LOWERY:** My class is 10:30 to noon,

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1 Tuesdays through Thursdays.

2 **THE COURT:** That's an automatic excuse there.

3 How come you didn't say this on your form? We tried to
4 free clear everyone.

5 **PROSPECTIVE JUROR LOWERY:** I did say it.

6 **THE COURT:** Then I goofed up.

7 (Laughter)

8 **THE COURT:** That's the first time in a long time.

9 (Laughter)

10 **THE COURT:** All right. I'm going to excuse
11 Ms. Lowery. She has to go to her classes. We can't keep her
12 here.

13 Any objection?

14 **MR. BICKS:** No, Your Honor.

15 **MR. VAN NEST:** No, Your Honor.

16 **THE COURT:** All right, Ms. Lowery. Good luck. Make
17 A's for me.

18 (Laughter)

19 **PROSPECTIVE JUROR LOWERY:** Thank you.

20 **THE COURT:** Thank you. Before we move on, we need to
21 replace Ms. Lowery.

22 Anybody else over there a student? It's an automatic out
23 if you would miss classes.

24 Okay.

25 **THE CLERK:** Rune Stromsness S-t-r-o-m-s-n-e-s-s.

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1 **THE COURT:** Okay. You get to have seat number 1.

2 All right. Again, I ask the question, did you hear the
3 hardship thing?

4 **PROSPECTIVE JUROR STROMSNESS:** Yes.

5 **THE COURT:** Do you know the schedule?

6 **PROSPECTIVE JUROR STROMSNESS:** Yes.

7 **THE COURT:** Do you have any hardship issue you want to
8 bring up?

9 **PROSPECTIVE JUROR STROMSNESS:** No.

10 **THE COURT:** Anyone else?

11 We go to Ms. McGrath. You need to use the microphone,
12 please.

13 **PROSPECTIVE JUROR MCGRATH:** I don't want to miss my
14 daughter's graduation on Tuesday from the credential program at
15 Sonoma State.

16 **THE COURT:** This coming Tuesday?

17 **PROSPECTIVE JUROR MCGRATH:** Yes.

18 **THE COURT:** What time of day would that be?

19 **PROSPECTIVE JUROR MCGRATH:** It's in the afternoon.

20 **THE COURT:** What time?

21 **PROSPECTIVE JUROR MCGRATH:** I think it's at 2 o'clock.

22 And the other thing is, I work full-time as a nurse at
23 Kaiser, in the cardiology clinic, as a heart failure care
24 monitor. And that's a nursing job and an extended role. And
25 there's no one trained to replace me when I'm off.

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1 **THE COURT:** That one I cannot give you. Kaiser is a
2 big company. They can figure it out. Under the law, that's a
3 hardship to the company, not to you. So that one I can't do.

4 But I'm more sympathetic to, your daughter is about to
5 graduate?

6 **PROSPECTIVE JUROR MCGRATH:** Uh-huh.

7 **THE COURT:** How early -- are you sure it's 2 o'clock?

8 **PROSPECTIVE JUROR MCGRATH:** Yes.

9 **THE COURT:** So let's say it's 2 o'clock. How early
10 would we need to adjourn that day for you to make it up to the
11 graduation?

12 **PROSPECTIVE JUROR MCGRATH:** Well, I live in Napa. So
13 I would normally be taking BART back to Martinez. So I would
14 drive from Martinez. I should get my husband first.

15 (Laughter)

16 **PROSPECTIVE JUROR MCGRATH:** And then drive to Sonoma.
17 I don't know how long. A few hours.

18 **THE COURT:** Is that the only issue you have for this
19 whole time period?

20 **PROSPECTIVE JUROR MCGRATH:** Yes.

21 **THE COURT:** Here's what we'll do. If you get selected
22 to serve, we will end early enough that day that you can make
23 the graduation.

24 Is that okay?

25 **PROSPECTIVE JUROR MCGRATH:** All right.

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1 **THE COURT:** All right. So you'll just have to tell me
2 what you need. And I'll rely on it in good faith. And we'll
3 have a shorter day that day. We'll figure out how to make it
4 up in some other way. But we're going to end at 1:00 o'clock
5 every day, so all right.

6 Anyone else? Down there. Ms -- how do you say your name?

7 **PROSPECTIVE JUROR SIZEMORE:** Sizemore.

8 **THE COURT:** Sizemore.

9 **PROSPECTIVE JUROR SIZEMORE:** I don't know if you call
10 this a hardship, but I'm a single person. And I have a Great
11 Dane that just turned 11 years old. And he's very sick. He's
12 not eating. I'm afraid he's going to pass in the next couple
13 of weeks. I will be an emotional wreck. I just wanted you to
14 know that. If I'm sitting here crying during the trial, you'll
15 know why.

16 **THE COURT:** What kind of dog is this?

17 **PROSPECTIVE JUROR SIZEMORE:** He's a Great Dane. And
18 it's very rare for them to be 11 years old. He's like my kid.
19 I know it's not a kid, but I still a feel like that.

20 **THE COURT:** So is there anyone there taking care of
21 the dog now?

22 **PROSPECTIVE JUROR SIZEMORE:** No. He stays at home.
23 But he's not doing well. He's gone from 115 to 93 pounds. And
24 I have to give him stimulants to make him eat stuff.

25 **THE COURT:** Are you going to be worrying about this

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1 the whole time?

2 **PROSPECTIVE JUROR SIZEMORE:** Pretty much, yeah.

3 **THE COURT:** I'm going to excuse Ms. Sizemore unless I
4 hear an objection.

5 **MR. VAN NEST:** No objection.

6 **MR. BICKS:** No.

7 **THE COURT:** Good luck with your pet.

8 **PROSPECTIVE JUROR SIZEMORE:** Thank you very much.

9 **THE COURT:** I hope the last days with your pet are
10 good ones.

11 **PROSPECTIVE JUROR SIZEMORE:** Thank you.

12 **THE COURT:** All right. Please go back to the jury
13 assembly room.

14 Anyone else have a hardship issue? Nobody is raising
15 their hand.

16 Dawn, we need to call forwards somebody else.

17 **THE CLERK:** Okay, Judge. Ronald Haley, H-a-l-e-y.

18 **THE COURT:** Okay. You get to take the empty seat,
19 Mr. Haley.

20 Mr. Haley. Do you have any hardship issue?

21 **PROSPECTIVE JUROR HALEY:** No.

22 **THE COURT:** Again, I need to ask, anyone of the 16 of
23 you have a hardship issue?

24 Okay. In the back row, Mr. Mangels.

25 **PROSPECTIVE JUROR MANGELS:** Question is right now I

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1 have to pee.

2 **THE COURT:** What?

3 **PROSPECTIVE JUROR MANGELS:** I have a weak bladder.

4 **THE COURT:** Do you have to go right now?

5 **PROSPECTIVE JUROR MANGELS:** Yeah. The question is,
6 how close are the breaks put together?

7 **THE COURT:** They can be -- they usually run an hour
8 and a half to an hour and 45 minutes apart.

9 **PROSPECTIVE JUROR MANGELS:** Okay. That's fine.

10 **THE COURT:** Can you make it that long?

11 **PROSPECTIVE JUROR MANGELS:** Yeah.

12 **THE COURT:** All right. Do you need to go right now?

13 The thing is, I've got to take a break for everyone. Can
14 you last about another -- do you have to go right now?

15 **PROSPECTIVE JUROR MANGELS:** I can hold off.

16 **THE COURT:** All right. You hold off.

17 Anyone else?

18 Anyone over there have difficulty with the English
19 language? This is going to involve a lot of documents and the
20 English language. If you have difficulty with English, you
21 really ought to raise your hand now.

22 Okay. Nobody is raising their hand. Good.

23 Okay. All right. What we're going to do now is start
24 getting some basic biographical information on you. And then
25 we will probably take a break in -- not go through all of you

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1 yet.

2 Who's got the microphone? Please hand it over to
3 Mr. Stromsness.

4 Mr. Stromsness, can you see that chart, that poster board?

5 **PROSPECTIVE JUROR STROMSNESS:** Pretty much. When I
6 get to the bottom one I will stand up.

7 **THE COURT:** Go down it and give good, accurate
8 information on each point.

9 **PROSPECTIVE JUROR STROMSNESS:** My name is Rune
10 Stromsness. I live in Oakland, California. I have a
11 bachelor's of science degree in electrical engineering and
12 computer science from the University of California at Berkeley.

13 I currently work for the Lawrence Berkeley National Lab as
14 a network and telephone manager.

15 I'm not sure exactly what you want for number 5. People I
16 donate money to, 40 or 50 or groups I'm actually active with.

17 **THE COURT:** Err on the side of telling us more than
18 less.

19 **PROSPECTIVE JUROR STROMSNESS:** Okay. The only group
20 that I'm currently active with is the North American Network
21 Operators Group.

22 **THE COURT:** North American what?

23 **PROSPECTIVE JUROR STROMSNESS:** North American Network
24 Operators Group. People who run systems on the Internet. And
25 I attend their meetings two or three times a year and pay

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1 membership dues to them.

2 I have in the past been active in alumni associations of
3 UC Berkeley. And then I give money to 40 or 50 different
4 causes. Environmental causes. Gay rights causes. I believe
5 that I have in the last couple of years given money to the EFF.
6 Just vaguely, I'm not sure I remember what all the causes I
7 donate to are.

8 **THE COURT:** All right.

9 **PROSPECTIVE JUROR STROMSNESS:** Hobbies, I like
10 walking, hiking, traveling, reading.

11 I am single but with a partner of seven years. My partner
12 is a network engineer, also at Lawrence Berkeley National
13 Laboratory.

14 I have no children.

15 I've never been on a jury before. Although I've been at
16 this stage once or twice in Superior Court.

17 I've never been in the military or law enforcement.

18 And I've never actually made it to be in a court.
19 Although, I was interviewed by a district attorney once. But
20 there was a plea deal. I never showed up in court.

21 **THE COURT:** Okay. Angie, whatever happened to the
22 originals?

23 **THE CLERK:** I have them.

24 **THE COURT:** You've got the originals.

25 All right. So Mr. Stromsness -- am I saying your name

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1 right?

2 **PROSPECTIVE JUROR STROMSNESS:** Stromsness.

3 **THE COURT:** You work in an area where you probably
4 know something about the subject matter we're dealing with.
5 Would that be a fair statement?

6 **PROSPECTIVE JUROR STROMSNESS:** I probably know
7 something about it, yes, as a student 20-some years ago.

8 **THE COURT:** It doesn't matter.

9 **PROSPECTIVE JUROR STROMSNESS:** Okay.

10 **THE COURT:** You can still be a juror on the case.
11 But you and your partner both work in this computer
12 science area; true?

13 **PROSPECTIVE JUROR STROMSNESS:** Correct.

14 **THE COURT:** So if you get selected to serve, you
15 cannot talk to your partner, when you go home at night, about
16 what the evidence was or about the arguments they're making.
17 Because then pretty soon he would be talking to you; right?

18 **PROSPECTIVE JUROR STROMSNESS:** Right.

19 **THE COURT:** Do you understand that?

20 **PROSPECTIVE JUROR STROMSNESS:** I do.

21 **THE COURT:** Are you going to have any trouble
22 following that?

23 **PROSPECTIVE JUROR STROMSNESS:** No.

24 **THE COURT:** All right. Please pass the microphone
25 over to Ms. Rocha.

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1 **PROSPECTIVE JUROR ROCHA:** Hi. My name is Diana Rocha.

2 I live in Concord, California.

3 I have some college.

4 I work as a transitional employment coordinator for
5 Goodwill Industries. And I'm not affiliated with any
6 organizations or clubs.

7 My hobbies are hiking, kayaking, and going to the beach.

8 And I'm divorced.

9 And I have three children. They are 31, 28, and 24. My
10 oldest works in finance. My middle child is a manager at Mac
11 Makeup. And my youngest is a manager at Panera Bread.

12 I have never had any prior jury service.

13 I've never been in the military or law enforcement.

14 And I've never been a party or a witness in court.

15 **THE COURT:** Okay. Thank you.

16 Next. Ms. Shattuck.

17 **PROSPECTIVE JUROR SHATTUCK:** My name is Judy Shattuck.

18 I live in Berkeley.

19 My education stopped somewhere around being a sophomore in
20 college.

21 I worked at the University of California as a clerical
22 employee for, I don't know, about 40 years.

23 I was active in my union.

24 I don't think -- well, somebody mentioned organizations to
25 which they contribute. And I do contribute to about 40

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1 organizations.

2 Hobbies, I do ceramics.

3 I'm divorced. My -- I was divorced from a mathematician.

4 I have one child, who is 40. And he does something about
5 computers. I really don't understand them.

6 Which reminds me that I wanted to say I don't have any
7 trouble with English. But in my limited experience with
8 computers, I find that English is used in strange and unnatural
9 ways.

10 (Laughter.)

11 **PROSPECTIVE JUROR SHATTUCK:** By computer people. And
12 I don't understand the second meaning that -- what computer
13 people mean by what I thought was, you know, simple words.

14 I've never been on a jury.

15 I have not been in the military or law enforcement.

16 And I've never been a party or witness in court.

17 **THE COURT:** Wonderful. Thank you.

18 Ms. McGrath.

19 **PROSPECTIVE JUROR MCGRATH:** My name is Jackie McGrath.
20 I live in Napa, California.

21 I have an associate degree. I'm a registered nurse at
22 Kaiser.

23 I'm a member of the California Nurses Association and a
24 couple of medical organizations.

25 I like gardening, hiking.

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1 Married. My husband has an auto repair business in Napa.

2 We have five children, adults. One is an auto repair
3 technician. One is a dental hygienist. One is a nurse. One
4 is graduating to be a teacher. And the other one is a pharmacy
5 technician.

6 I was on a jury in my 20s. And I barely remember anything
7 about it. Although, it was a guilty verdict.

8 I've never been in the military or law enforcement.

9 And I've never been a witness in court or in any court
10 proceeding myself.

11 **THE COURT:** Thank you.

12 Mr. Wong.

13 **PROSPECTIVE JUROR WONG:** My name is Michael Wong. I
14 live in San Francisco. I've had some college education.

15 I work at UCSF Medical Center.

16 **THE COURT:** Closer to the microphone, please.

17 **PROSPECTIVE JUROR WONG:** I work at UCSF Medical Center
18 as maintenance.

19 Organizations, Chinese American Citizens Alliance. But I
20 go for the activities.

21 Hobbies, electronics, some sports.

22 Single. No spouse. No kids.

23 I've never been on a jury duty, jury service.

24 I have no military or law enforcement background.

25 And I was a character witness about 30 years ago. A

JURY VOIR DIRE

1 friend of mine just was accused of shoplifting.

2 **THE COURT:** Okay. What do you like about electronics?
3 What do you -- what's your thing there?

4 **PROSPECTIVE JUROR WONG:** I like to just tinker with
5 everything that comes out on the market.

6 **THE COURT:** Like what? Give us an example.

7 **PROSPECTIVE JUROR WONG:** Photography, video, audio.
8 Computers as well.

9 **THE COURT:** Thank you.

10 Next we go to Ms. Jacobs.

11 **PROSPECTIVE JUROR JACOBS:** Hi. My name is Marion
12 Jacobs. I live in Concord, California.

13 I have a bachelor's of science in nursing. I am an R.N.
14 in the emergency department for John Muir.

15 I am involved with ENA, Emergency Nurses Association.
16 Also, I'm an active member of nursing union.

17 Hobbies, I like to garden. I have a 1-year-old so there's
18 not much time for hobbies.

19 (Laughter)

20 **PROSPECTIVE JUROR JACOBS:** I am married. My husband
21 is a retired deputy sheriff for Contra Costa County. But he's
22 a stay-at-home father now.

23 We have a 13-month-old. He does not work.

24 (Laughter)

25 **PROSPECTIVE JUROR JACOBS:** I have not been on a jury.

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1 Like I said, my husband is retired law enforcement.

2 And I have never been part of a witness or party of a
3 court case.

4 **THE COURT:** Thank you.

5 Mr. Haley.

6 **PROSPECTIVE JUROR HALEY:** Hi. My name is Ron Haley.
7 I live in Portola Valley.

8 My education is I have an MBA from UC Berkeley.

9 I'm currently retired. Previously, I was a CFO for an
10 aerospace company.

11 **THE COURT:** What kind of company?

12 **PROSPECTIVE JUROR HALEY:** Aerospace company.

13 **THE COURT:** Do you mind telling us which one?

14 **PROSPECTIVE JUROR HALEY:** Sure. Space Systems Loral.
15 They make communication satellites. Mostly commercial venture.
16 A little bit of government.

17 **THE COURT:** And you were the CFO?

18 **PROSPECTIVE JUROR HALEY:** I was the CFO, correct.

19 **THE COURT:** All right.

20 **PROSPECTIVE JUROR HALEY:** No organizations or clubs to
21 speak of.

22 Hobbies are hiking and other activities.

23 I am married. My spouse is retired also. She was a
24 stay-at-home spouse for most of our relationship together.
25 Worked briefly as a product line manager for Bechta (phonetic)

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1 Machines, which is a biomedical firm.

2 Children two. 31 and 29. My oldest is just getting out
3 of school with an MBA. Graduates this spring. And my daughter
4 works with a software company in marketing.

5 I have been on a prior jury. We did not reach a verdict.
6 It was a plea bargained before we got it, about three days into
7 the court. It was a criminal action.

8 Never been in the military. And I have been a witness in
9 court as part of my job responsibilities in a wrongful
10 discharge suit.

11 **THE COURT:** When you were working for the satellite
12 company?

13 **PROSPECTIVE JUROR HALEY:** That's right.

14 **THE COURT:** Thank you.

15 Next, Mr. Kotlar.

16 **PROSPECTIVE JUROR KOTLAR:** Yes, John Kotlar. City of
17 residence Oakland.

18 Finished a bachelor's of arts in Biblical studies at
19 Marionette Baptist Bible College.

20 Most recently got hired by East Bay MUD. Member of
21 Heritage Baptist Church. And, unfortunately, a member of the
22 union at 444 AFSCME.

23 Gave you my work.

24 Hobbies are trees, movies, TV, coin collecting. Things
25 like that.

JURY VOIR DIRE

1 Married to my wife of almost 19 years. She's a teacher at
2 California Crosspoint High School.

3 No children, unfortunately.

4 Prior jury service, recently, about a month ago, say, in
5 Oakland. Every time I go to Oakland on a jury I get selected.
6 I was an alternate. They were supposed to tell me their
7 verdict, but I didn't hear it.

8 But two decades ago at Oakland, also, I served on a jury.
9 And we reached a verdict. It was a preliminary trial. Both
10 were civil. And we were supposed to find for some guy who had
11 mesothelioma, which you hear a lot about now. So then it
12 wasn't a big thing back then. But we found he should get some
13 money. But it was only a preliminary hearing.

14 No military service. Although, I wanted to join the
15 Marines.

16 Never been a witness.

17 **THE COURT:** What do you do for East Bay MUD?

18 **PROSPECTIVE JUROR KOTLAR:** Janitorial.

19 **THE COURT:** Thank you.

20 Let's go back. Mr. Mangels -- okay. Angie is doing it.
21 We'll take over with Ms. Harper. Thank you.

22 Ms. Harper, your turn. Can you see the chart?

23 **PROSPECTIVE JUROR HARPER:** Yes. My name is Betsey
24 Harper. I live in Petaluma.

25 I possess a 2-year degree in human resources. And I'm

JURY VOIR DIRE

1 working on a four year business degree.

2 I work as an employment and training counselor for the
3 County of Sonoma.

4 I belong to a union with the County. In the past I've
5 been involved with Girl Scouts, Project Grad, and other
6 children-related organizations.

7 Hobbies include gardening, traveling, motorcycle riding.

8 I am married. My husband is a salesman and business
9 manager for a family-owned company in Petaluma.

10 We have two children, 23 and 27. One of them works in
11 retail. And one of them works in childcare.

12 I have never been selected to participate in a jury.

13 I have no previous military or law enforcement experience.

14 And I've been in court speaking only for myself for
15 custody issues and things of that nature.

16 **THE COURT:** All right. Thank you.

17 Mr. Roberds.

18 **PROSPECTIVE JUROR ROBERDS:** Hi. My name Paul Roberds.
19 I'm from Concord, California.

20 Education, electrical education. I work for Performance
21 Electric.

22 And no organizations. Hobbies, motorcycles and music.

23 I'm single. Have no children.

24 No prior jury service.

25 Never been in the military.

JURY VOIR DIRE

1 And never been a party or witness in court.

2 **THE COURT:** And do you -- are you an electrician?

3 **PROSPECTIVE JUROR ROBERDS:** Yes. I'm electrician.

4 But right now I'm -- I'm not working, so.

5 **THE COURT:** All right. Thank you.

6 Now we go to Ms. Riddle.

7 **PROSPECTIVE JUROR RIDDLE:** I can't see the board.

8 **THE COURT:** Can we bring it up a little closer to you?

9 I'll tell you what, I'll call out the questions. How's that?

10 **PROSPECTIVE JUROR RIDDLE:** Okay.

11 **THE COURT:** First one: Name.

12 **PROSPECTIVE JUROR RIDDLE:** Debra Riddle.

13 **THE COURT:** City of residence.

14 **PROSPECTIVE JUROR RIDDLE:** Union City.

15 **THE COURT:** Education.

16 **PROSPECTIVE JUROR RIDDLE:** Two years in college.

17 **THE COURT:** Did you have a major?

18 **PROSPECTIVE JUROR RIDDLE:** Psychology.

19 **THE COURT:** Okay. Most recent employer or job.

20 **PROSPECTIVE JUROR RIDDLE:** I work at El Camino
21 Hospital.

22 **THE COURT:** Where?

23 **PROSPECTIVE JUROR RIDDLE:** El Camino Hospital, as a
24 help desk technician.

25 **THE COURT:** Are you doing that now?

JURY VOIR DIRE

1 **PROSPECTIVE JUROR RIDDLE:** IT, yes.

2 **THE COURT:** What organizations, clubs, unions, et
3 cetera, are you --

4 **PROSPECTIVE JUROR RIDDLE:** I'm not in any.

5 **THE COURT:** Not in any.

6 Okay. How about a union. Are you in the union?

7 **PROSPECTIVE JUROR RIDDLE:** No.

8 **THE COURT:** Hobbies?

9 **PROSPECTIVE JUROR RIDDLE:** Dancing, reading, movies.
10 That's about it.

11 **THE COURT:** Okay. Marital -- what does that say?
12 Marital status.

13 **PROSPECTIVE JUROR RIDDLE:** Single.

14 **THE COURT:** What?

15 **PROSPECTIVE JUROR RIDDLE:** Single. No children.

16 **THE COURT:** Okay. Spouse. Do you have any children?

17 **PROSPECTIVE JUROR RIDDLE:** No.

18 **THE COURT:** All right. Prior jury service.

19 **PROSPECTIVE JUROR RIDDLE:** I got as far as this, the
20 jury selection. And I was excused.

21 **THE COURT:** Okay. Ever served in the military or law
22 enforcement?

23 **PROSPECTIVE JUROR RIDDLE:** No.

24 **THE COURT:** Ever been a party or a witness in court?

25 **PROSPECTIVE JUROR RIDDLE:** No.

JURY VOIR DIRE

1 **THE COURT:** Okay. That's it. Thank you.

2 Now, we go to Ms. Goldberg. Can you see that?

3 **PROSPECTIVE JUROR GOLDBERG:** Yes, thank you.

4 **THE COURT:** Mr. Van Nest, would you rotate the thing
5 about 30 degrees so everyone over there can see it.

6 Thank you.

7 **MR. VAN NEST:** Is that better?

8 **PROSPECTIVE JUROR GOLDBERG:** Thank you.

9 My name is Claudette Goldberg. I live here in
10 San Francisco.

11 I have a master's in environmental management.

12 I'm currently employed at Climate Works Foundation as a
13 coordinator in funder collaborations.

14 No organization/affiliation at the moment.

15 Hobbies, I swim when I get a chance.

16 I'm married. My husband is retired and does different
17 things. Most relevant to this case is he represents
18 technologists. And he had a patent awarded a couple of months
19 ago. And he'll be taking it to market in a few more months.
20 And these are several potential buyers in this room.

21 **THE COURT:** I didn't understand that part. Is your
22 husband a lawyer?

23 **PROSPECTIVE JUROR GOLDBERG:** He is not a lawyer, but
24 he -- we have a lawyer. He is a patent holder. And he will be
25 selling the patent, the rights to use the patent.

JURY VOIR DIRE

1 **THE COURT:** Are you saying he will be approaching one
2 of these companies --

3 **PROSPECTIVE JUROR GOLDBERG:** Yes.

4 **THE COURT:** -- to buy his patent?

5 **PROSPECTIVE JUROR GOLDBERG:** Correct.

6 **THE COURT:** While this trial is going on?

7 **PROSPECTIVE JUROR GOLDBERG:** Quite possible. As soon
8 as possible would be great. It is possible there would be
9 overlap.

10 I think relating to question 9D, I would like all those
11 six people to really like me. So this is a little concerning
12 for me to be here.

13 **THE COURT:** Well, I don't know. I guess this is going
14 to sabotage that patent thing.

15 **PROSPECTIVE JUROR GOLDBERG:** I hope -- let's see.

16 **THE COURT:** Okay. Keep going.

17 **PROSPECTIVE JUROR GOLDBERG:** Prior jury service, none.
18 Never got past this point.

19 No military or law enforcement experience.

20 And no party or witness in court.

21 **THE COURT:** All right. Thank you.

22 Ms. Settles.

23 **PROSPECTIVE JUROR SETTLES:** Thank you. My name is
24 Jeannie Settles. I live in San Carlos, on the peninsula.

25 I have some college.

JURY VOIR DIRE

1 I work for San Mateo County as a telephone operator.

2 I am involved in the union.

3 My hobbies, hiking, cooking.

4 I am married. My husband has his own business, appliance
5 repair.

6 We have four children. Do you want their occupations?

7 **THE COURT:** Occupations.

8 **PROSPECTIVE JUROR SETTLES:** Electrician. My second
9 works at the glass store in Marin County. My daughter is at
10 some college in Squaw Valley. And my son is at San Francisco
11 State.

12 **THE COURT:** Okay.

13 **PROSPECTIVE JUROR SETTLES:** No jury duty.

14 My husband did serve in the military six years, with the
15 U.S. Navy.

16 And I've never been a witness in court.

17 **THE COURT:** Thank you. Ms. Calonsag.

18 **PROSPECTIVE JUROR CALONSAG:** Hi. My name is Melanie
19 Calonsag. I live in Daly City, California.

20 I have a bachelor's degree in finance. I'm an accountant
21 for KaMMCO Mutual Insurance Company.

22 I'm not involved in any organizations.

23 My hobbies are traveling and photography.

24 I am married. My spouse is -- he works in business
25 development for a high-tech startup.

JURY VOIR DIRE

1 I have no children.

2 No prior jury service.

3 Never been in the military.

4 And never a party or witness in court.

5 **THE COURT:** So what's the name of the high-tech
6 startup?

7 **PROSPECTIVE JUROR CALONSAG:** Sherline Systems
8 (phonetic) in San Jose.

9 **THE COURT:** All right. Thank you.

10 Go to Ms. Hines.

11 **PROSPECTIVE JUROR HINES:** Hi. I'm Melissa Hines. I'm
12 from Clayton, California.

13 I have a marketing degree from St. Mary's College in
14 Moraga.

15 I currently work for PG&E as their product manager. I'm
16 involved in a few of the employee resource groups at PG&E.

17 I like to travel and do Yoga.

18 Single.

19 No children.

20 No prior jury service.

21 I've never been in the military, law enforcement.

22 Nor have I been a party or witness in court.

23 **THE COURT:** Thank you.

24 Mr. Mangels.

25 **PROSPECTIVE JUROR MANGELS:** Dave Mangels. Livermore.

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1 High School with some college classes.

2 Retired 2005 from Oakland International Flight Service
3 Station.

4 No organizations.

5 Gardening.

6 Married. Wife secretary.

7 No children.

8 Services, as far as jury is, DWI and a lawsuit about a
9 malpractice with a doctor.

10 And, let's see. Military four years.

11 And was a witness in the Sinatra plane crash accident.

12 **THE COURT:** Say that again.

13 **PROSPECTIVE JUROR MANGELS:** A witness for the Frank
14 Sinatra's mother's plane accident in Palm Springs back in the
15 '70s.

16 **THE COURT:** You were an eyewitness to that?

17 **PROSPECTIVE JUROR MANGELS:** I was a witness.

18 **THE COURT:** Really? Okay.

19 So you --

20 **PROSPECTIVE JUROR MANGELS:** That's because the pilot
21 filed his flight plan through the FAA. That's where the
22 witness thing came in.

23 **THE COURT:** You said that you were on a jury before.
24 But did those juries -- don't tell me what the verdicts were,
25 but did you reach a verdict?

JURY VOIR DIRE

1 **PROSPECTIVE JUROR MANGELS:** Oh, yeah. Yes. Yes.

2 Both the municipal and a superior.

3 **THE COURT:** Okay.

4 Now, here's the deal: We're going to take a break. And I
5 need to remind you of that important -- really, I have to say,
6 direct order, no research about the case. No talking with each
7 other about the case or with anyone else about the case.

8 You can talk about sports. I don't even recommend
9 politics.

10 (Laughter)

11 **THE COURT:** You don't even want to go there. Just
12 stick with safe topics, weather, sports, traffic. And we'll
13 take a 20-minute break. And then we'll resume right at that
14 spot.

15 And, now, all of you in the back of the room, we will need
16 some of you yet, most likely. So you've got to come back too.
17 And then we'll just pick it up from there.

18 You should take your purses and belongings with you just
19 in case. But remember where you're seated so that we can get
20 you back in the same order.

21 And we can't start until you're all here. So if one of
22 you is late, then we just have to sit here. So please be on
23 time.

24 We'll take a 20-minute break. Thank you.

25 **THE CLERK:** All rise.

JURY VOIR DIRE

1 **THE COURT:** You need to take your questionnaire with
2 you or leave it on the bench.

3 (Venire exits courtroom.)

4 **THE COURT:** All right. Everyone be seated. '.

5 Is there anyone still in the courtroom who is a
6 prospective juror? If so, raise your hand. Everyone is gone.

7 First item of business, for the three of the venire who I
8 returned back to their seats, I'm going to hand down to you the
9 questionnaires so you can come look at them now and make sure I
10 did it right.

11 I want you to take a look and see if I did it right. I
12 think I did. They had answered that they had a strong view one
13 way or the other on the question number 9.

14 (Counsel review questionnaires.)

15 **THE COURT:** And they had not circled anybody on the
16 reverse side.

17 **MR. BICKS:** Looks right.

18 **MR. VAN NEST:** I think so, Your Honor.

19 **THE COURT:** Okay. So hand those back to me.

20 Given how many we have in the courtroom and what our hit
21 ratio is, I feel that we could excuse these now.

22 You didn't want to -- because it's very unlikely we're
23 going to get to them. They're going to be at the very end.
24 But I will continue with our protocol as we agreed on it.

25 **MR. VAN NEST:** I would just as soon hold on for now,

JURY VOIR DIRE

1 Your Honor.

2 **THE COURT:** All right. We'll hold on to them.

3 Okay. Then I feel that Ms. Goldberg is going to have her
4 husband go to one of you two companies and try to sell her
5 patent.

6 (Laughter)

7 **THE COURT:** And I feel that that's a problem. And I
8 don't want that even in the mix. It could just be a gimmick to
9 get out of jury service. I don't know. But I think we should
10 excuse her. I want to get your views.

11 **MR. VAN NEST:** I agree, Your Honor.

12 **MR. BICKS:** Your Honor, I think we might benefit from
13 hearing a little bit more about it. Not a copyright and --

14 **THE COURT:** Look. You just want somebody who likes
15 IP. That's it. That's all you want. And you're going to
16 waste our time while Mr. Van Nest shows that she's biased.

17 I'm going to leave her on for now, but I can see right
18 through what you're doing.

19 **MR. BICKS:** I couldn't tell the -- how real --

20 **THE COURT:** She says her husband wants to sell patents
21 to your company, and she wants Mr. Ellison to love her.

22 (Laughter)

23 **THE COURT:** Right?

24 **MR. BICKS:** She said --

25 **MR. VAN NEST:** Your Honor, she did say, even

JURY VOIR DIRE

1 unsolicited, there are a couple of buyers in the room. I mean,
2 it was --

3 **THE COURT:** Couple of what?

4 **MR. VAN NEST:** Buyers, potential buyers.

5 **THE COURT:** That's what she said?

6 **MR. VAN NEST:** That's what --

7 **MR. BICKS:** Your Honor, I didn't hear the "buyers in
8 the room" comment. But that makes sense to let her go.

9 **THE COURT:** Didn't she say that?

10 Did anyone else over there -- she said that the two
11 companies that are represented here were potential buyers of
12 her husband's patent; right?

13 **MR. VAN NEST:** Yes.

14 **MR. BICKS:** Yeah.

15 **THE COURT:** Do you agree that I can excuse her?

16 **MR. BICKS:** Yes.

17 **THE COURT:** All right. She's gone.

18 Okay. How about Ms. McGrath? Ms. McGrath is a different
19 situation.

20 She's the nurse who wants to attend her -- the only issue
21 there is whether or not -- we may have to give up two hours of
22 testimony that day in order to keep her.

23 I'm willing to do that because she seems like a good
24 person. But if you both stipulated, I would excuse her. But I
25 feel like ordinarily I couldn't do that. I think we can

JURY VOIR DIRE

1 accommodate that one conflict.

2 **MR. BICKS:** I agree.

3 **MR. VAN NEST:** Also, Your Honor.

4 **THE COURT:** All right. So we will excuse her; agreed?

5 **MR. VAN NEST:** Yes, sir.

6 **THE COURT:** All right. So those two. Is there anyone
7 else you want to discuss?

8 **MR. BICKS:** I was going to raise Ms. Riddle, Your
9 Honor.

10 **THE COURT:** All right.

11 **MR. BICKS:** On her questionnaire she was the one who,
12 I think, stood up and made comments she was very fond of
13 Google. And then I see on the questionnaire I think it says
14 "Adorable" about Google. "Favorable." And then it says, "Yes,
15 I have a strong opinion." And then it was crossed out.

16 **THE COURT:** Well, under our protocol I have to go the
17 way I did.

18 But what do you say over there? What she wrote -- she
19 wrote down "Favorable" about Google, but then she scratched
20 that out. At first she said, "Yes, I have a strong opinion
21 about Google." She scratched that out and said, "No, I have no
22 strong opinion."

23 **MR. BICKS:** And next, Your Honor, she said she likes
24 Google's products.

25 **THE COURT:** Yeah.

JURY VOIR DIRE

1 **MR. VAN NEST:** Your Honor, she also said, maybe more
2 important than this, she can't see well. She couldn't even see
3 this board. So I'm fine letting her go.

4 **THE COURT:** You're fine letting her go. Is that what
5 you both want to do?

6 **MR. BICKS:** Sure.

7 **MR. VAN NEST:** Yes.

8 **THE COURT:** Let me hear it.

9 **MR. BICKS:** Yes.

10 **THE COURT:** So Ms. Riddle is gone.
11 Anybody else you want to talk about?

12 **MR. BICKS:** Not here, Your Honor.

13 **THE COURT:** All right. So what I'm going to do now is
14 replace them in the order of -- I'll just excuse all three and
15 then replace them in their seated order.

16 McGrath, Riddle, Goldberg. Agreed?

17 **MR. VAN NEST:** Agreed. By their seat order, you mean
18 1, 2, 3?

19 **THE COURT:** McGrath would be first. She has the
20 lowest seat. Riddle next. Then Goldberg next.

21 **MR. VAN NEST:** That's fine.

22 **THE COURT:** Does Oracle agree on that?

23 **MR. BICKS:** On Ms. McGrath, I said I was fine with her
24 staying, as Your Honor indicated.

25 **THE COURT:** I misunderstood. Are you fine with me

JURY VOIR DIRE

1 excusing her?

2 **MR. BICKS:** I thought we're fine with her staying.

3 **THE COURT:** Are you fine with excusing her?

4 I mean, in other words, I proposed to excuse her because I
5 think we might need that two hours of time. Now, if you say
6 no, you object --

7 **MR. BICKS:** I don't object.

8 **THE COURT:** What?

9 **MR. BICKS:** I do not object. If you wanted to keep
10 her, I said I was fine with that.

11 **THE COURT:** I would prefer to -- I think it's a close
12 call. It's a close call. I think, though, that we're better
13 off getting somebody who going in we know we don't have to --
14 we don't have to cut two hours out of what might be a tight
15 schedule.

16 But I'm thinking about it. That's the way I would like to
17 go, is to excuse her.

18 **MR. VAN NEST:** No objection.

19 **MR. BICKS:** That's fine, Your Honor.

20 **THE COURT:** All right. We're going to excuse all
21 three. I'm going to replace them in the orders of McGrath,
22 Riddle, Goldberg, which is their seat order.

23 Any other people you want to bring up and discuss?

24 **MR. VAN NEST:** Not here, Your Honor.

25 **THE COURT:** Okay. Well I'm not quite to the point

JURY VOIR DIRE

1 where I'm going to have -- you're going to get your question,
2 but in the next -- you will get to ask some questions.

3 You get to go first; right?

4 **MR. BICKS:** Yes.

5 **THE COURT:** Okay. So, all right.

6 On the two that we excused because they circled a name on
7 the back, one was the woman who does Larry Ellison's
8 accounting.

9 (Laughter)

10 **THE COURT:** And the other was the guy who knows
11 Hiroshi Lockheimer. So those two, if you want to see them,
12 I'll leave them up here. And Dawn can show them to you.

13 Okay. We're going to take about an 11- or 12-minute break
14 ourselves and then resume.

15 **MR. BICKS:** Thank you.

16 (Recess taken from 10:06 to 11:17 a.m.)

17 **THE COURT:** Be seated, please. No need to get up.
18 Thank you.

19 All right. We -- Ms. McGrath, we don't want you to miss
20 out on your graduation. We could end early, but then that
21 presents a problem for us. We're going to excuse you unless
22 you want to -- no. Just go ahead.

23 (Laughter)

24 **THE COURT:** It's important for you to take off. Tell
25 the jury assembly room what happened.

JURY VOIR DIRE

1 **PROSPECTIVE JUROR MCGRATH:** Thank you.

2 **THE COURT:** Okay. Ms. Riddle, you get to be excused,
3 too, because you're having trouble reading the poster board.
4 And you have to read a lot of stuff in this case. You're
5 excused as well.

6 Ms. Goldberg, you're excused on account of you're trying
7 to sell products to both sides here.

8 (Laughter)

9 **PROSPECTIVE JUROR GOLDBERG:** Thank you.

10 **THE COURT:** Now, the clerk will call the name and
11 replace Mrs. McGrath.

12 **THE CLERK:** Sean McKnew, M-c-K-n-e-w.

13 **THE COURT:** Please take the front-row seat.

14 **THE CLERK:** We need his questionnaire first, Your
15 Honor.

16 **THE COURT:** That's right. I'm sorry. Come up here.
17 Let me see your questionnaire.

18 Mr. McKnew, you get to go sit back in your seat.

19 **PROSPECTIVE JUROR MCKNEW:** Okay.

20 **THE COURT:** I'll explain later.

21 All right. Now we go to?

22 **THE CLERK:** Anthony west, W-e-s-t.

23 All right. Thanks.

24 **THE COURT:** Mr. West, you get to go sit in that
25 first-row seat.

JURY VOIR DIRE

1 And the next name, please.

2 **THE CLERK:** Yvonne Brown, B-r-o-w-n.

3 **THE COURT:** Yvonne Brown. Please let me see your
4 questionnaire.

5 Ms. Brown, welcome. You get to take the number 3 seat in
6 the back row.

7 It's going to be a little tough for you to manage it, but
8 Angie will show you the best way in.

9 Next name, please.

10 **THE CLERK:** Luis Torres, T-o-r-r-e-s.

11 **THE COURT:** Mr. Torres, you get to go sit in your
12 original seat. Thank you.

13 **THE CLERK:** Jonathan Bruesewitz, I guess. Bruesewitz.

14 **THE COURT:** Bruesewitz.

15 **PROSPECTIVE JUROR BRUESEWITZ:** There it is.

16 (Laughter)

17 **THE CLERK:** Thank you.

18 **THE COURT:** All right. You get to take the empty
19 seat, please.

20 Angie, would you mind doing these three. Thank you.

21 So I'll just ask the three of you who just joined us,
22 Ms. Brown, Mr. Bruesewitz, Mr. West, do you have any hardship
23 issue you wish to raise?

24 **PROSPECTIVE JUROR WEST:** No, sir.

25 **THE COURT:** Ms. Brown?

JURY VOIR DIRE

1 **PROSPECTIVE JUROR BROWN:** No.

2 **PROSPECTIVE JUROR PROSPECTIVE JUROR BRUESEWITZ:** No.

3 **THE COURT:** All right. So no hardship. This is the
4 time to do it. If you get selected, you can't later say, "I
5 have a hardship issue."

6 I have that happen every now and then. Somebody gets
7 selected for the jury, and then suddenly they're being sworn
8 in. In the opening statements they say, Wait, wait, wait. I
9 should have told you this. And then I say, You're in for the
10 duration. You have been drafted into the U.S. Army.

11 (Laughter)

12 **THE COURT:** You are in for the duration. You can't
13 get out of it later. So this is the time to say something.

14 Okay. Nobody said anything.

15 Okay. Mr. West, can you seat the chart?

16 **PROSPECTIVE JUROR WEST:** My name is Anthony West.

17 **THE COURT:** Wait. We have to give you the microphone.
18 Who has the microphone? It's right there.

19 **PROSPECTIVE JUROR WEST:** My name is Anthony West. I'm
20 from Concord.

21 Education is high school only.

22 I'm in plumbing. I work for Absolute Plumbing.

23 No clubs.

24 Hobbies are action sports and video games.

25 **THE COURT:** Talk more into the mic.

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1 **PROSPECTIVE JUROR WEST:** Marital status is single.

2 No children.

3 No prior jury service.

4 Never been in the military.

5 And I've never been a witness.

6 **THE COURT:** Okay. All right. Please pass the mic to
7 Ms. Brown.

8 **PROSPECTIVE JUROR BROWN:** My name is Yvonne Brown. My
9 education is back home in the Philippines, high school
10 graduate. I took college, but I didn't finish. And three
11 years college. That's all.

12 **THE COURT:** Was that in the Philippines or here?

13 **PROSPECTIVE JUROR BROWN:** In the Philippines.

14 **THE COURT:** Okay.

15 **PROSPECTIVE JUROR BROWN:** I'm not -- I am not
16 experience in -- I am not a member of any organization.

17 And my work is a caregiver right now. And I took up CNA
18 back in Texas.

19 And I don't have much hobbies because I work most of the
20 time.

21 And I'm married.

22 I have no experience in military or jury -- any jury or
23 any -- or any court witnesses whatsoever.

24 **THE COURT:** So you've got to be here at 7:45 each
25 morning all the way through June 10th. Do you understand that

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1 part?

2 **PROSPECTIVE JUROR BROWN:** Yes, sir.

3 **THE COURT:** Can you make that time?

4 **PROSPECTIVE JUROR BROWN:** I will try, sir.

5 **THE COURT:** Well, you have to be here. And then --
6 and go all the way through 1:00 o'clock each day. Do you
7 understand that part?

8 **PROSPECTIVE JUROR BROWN:** Yes.

9 **THE COURT:** Will that be a hardship on you?

10 **PROSPECTIVE JUROR BROWN:** No.

11 **THE COURT:** No? Okay. Thank you.

12 **PROSPECTIVE JUROR BROWN:** Especially going home it's
13 not a hardship.

14 (Laughter)

15 **THE COURT:** All right. Mr. Bruesewitz.

16 **PROSPECTIVE JUROR BRUESEWITZ:** My name is Jonathan
17 Bruesewitz. I live in Pleasant Hill, California.

18 I have a bachelor of science in international management,
19 with a minor in economics.

20 My current job is financial analyst with NRT Inc. They
21 are a commercial real estate company.

22 No clubs or anything like that.

23 Hobbies, golf when I have time.

24 Marital status, newlywed. Spouse, she works for GAP Inc.
25 as a merchandiser.

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1 No children.

2 No prior jury service.

3 Did not serve in the military, law enforcement.

4 And have not been a party or witness in court.

5 **THE COURT:** Okay. Thank you.

6 Just hold on to the mic for a minute.

7 Now, all of you 16, just to kind of summarize a little
8 bit, if you have been on a prior jury, please raise your hand.

9 (Show of hands.)

10 **THE COURT:** One, two, three of you.

11 If you were the foreperson on the jury, raise your hand.

12 So nobody has been the foreperson before. All right.

13 I want to tell you, we're -- we're not even halfway done
14 yet so we -- just relax and listen to the questions, and answer
15 the questions properly.

16 I want to go over what the jury does, what the important
17 role of the jury is, because, believe it or not, I found in
18 this job -- I used to be a lawyer -- I knew what a jury did,
19 but I find that many people don't because a lot of you haven't
20 served on a jury before. So I'm going to tell you what
21 happens.

22 We need ten of you in the end. Ten will be the magic
23 number. And the ten members of the jury are in the jury box.
24 And they are the decision-maker. They decide who wins and who
25 loses.

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1 So they have to consider two things in making their
2 decision. One is the -- one side or the other on every issue
3 will have what's called the burden of proof.

4 So just to take an example on the question of fair use,
5 fair use under the copyright law -- and you'll learn a lot more
6 about this later -- the burden of proof is on Google.

7 So at the end of the case I will explain to you what it is
8 that Google has to prove in order to carry its burden of proof.
9 And that will involve four factors that Congress has said are
10 the factors to consider. And then you, in your own mind, weigh
11 the factors. But Google is the one who has to carry the burden
12 of proof on that issue. There are other issues in the case
13 where Oracle will have the burden of proof.

14 Anyway, at the end of all the evidence and at the end of
15 all that segment, you, the jury, ask, Has the party with the
16 burden of proof carried its burden of proof on this issue?

17 If the answer is yes, and you agree unanimously -- it has
18 to be unanimous. That means all of you agree, all ten. If you
19 all agree that the party with the burden of proof has proven
20 what it needs to, to carry its burden of proof, then that party
21 wins. Your verdict should be for that party.

22 On the other hand, if they fall short even a little bit
23 and they don't quite persuade you that you've carried their
24 burden of proof, even though they have some good points, maybe,
25 then the party with the burden of proof loses. And it's your

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1 duty to say they lose on that issue.

2 Now, that's what the jury does. It's like a laboratory
3 experiment. The laboratory is this room. And the data and the
4 evidence that comes in all comes in through witnesses on the
5 witness stand and documents that you will see. And that's the
6 evidence in the case.

7 And so what you do is you lay that evidence alongside what
8 the elements of proof are that have to be proven, and ask the
9 question, Has the party with the burden of proof done what they
10 have to do to carry their burden of proof?

11 And if you say yes, they persuaded me, great. If you say
12 no, they didn't persuade me, that's great too. But that's what
13 you do.

14 And you must lay the facts, as you find them, alongside
15 the areas of proof that are required under the law, and you
16 decide whether or not the party with the burden of proof
17 measured up or not, okay.

18 I've said that, now, three or four times. But I'm telling
19 you that a lot of people don't know what a jury does. Some
20 people think, well, the judge is going to give us some kind of
21 secret handshake or signal or come into the jury room and tell
22 us how to come out. No. We never do that.

23 In fact, I will shall -- I don't have a view on who should
24 prevail. But even if I did have a view, then I would never
25 tell you. It's a decision for you to make, not for me to make.

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1 And I would never try to signal to you how you should decide
2 the case.

3 So with that explanation, you can see it's very -- it's so
4 important that you pay close attention and you listen to the
5 evidence. And you try your best to understand it.

6 It's going to be technical -- a lot of technical evidence
7 too. And you've got to try hard to understand it and then go
8 into the jury room and see if you -- whether the party with the
9 burden of proof has persuaded you on whatever issue it is.

10 **THE COURT:** So now the part that is my responsibility
11 is to tell you what the elements of proof are that have to be
12 proven. That's called the instructions of law. I will tell
13 you what it is; that on every single issue in the case, I will
14 tell you A, B, C and D have to be proven or whatever the test
15 is. I will explain to you what the test is and then you have
16 to be the one to apply it, but you do have to follow my test
17 because I'm telling you, for example, what Congress has told us
18 that we have to do under the Copyright Act and then I convey to
19 you what that is.

20 These lawyers went to school for three years at least in
21 law school. You get to go to law school for 45 minutes, and I
22 will explain to you what the law is in about 45 minutes, but
23 it's tailor-made to this case, so it's really very efficient so
24 you learn as much law as you need to decide the case.

25 But the fact part of the case, the facts of the case,

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1 you're going -- this is going to be amazing to you. There are
2 going to be some things these lawyers agree on and some things
3 they -- one side will say the light was red and the other will
4 say the light was green. It's going to be completely the
5 opposite. So you will need to decide maybe who is telling the
6 truth. Or what witnesses are mistaken because on some things,
7 they both can't be right, so you're going to need to make those
8 kind of credibility determinations for yourself. I don't tell
9 you this.

10 Now, here's another thing that you need to know. I will
11 repeat this several times. As the trial goes on, you're not
12 going to hear much from me. You have heard a lot from me right
13 now, but as the trial goes on, you won't hear much from me.
14 You will hear tons from these lawyers.

15 Not one word a lawyer ever says in court is evidence. I'm
16 going to repeat that because most of you don't know that.
17 These opening statements and closing arguments and even the
18 questions that they ask, they are not evidence. The evidence
19 is what the witness agrees to on the stand under oath and what
20 the documents say that come into evidence and the photos and so
21 forth. Yes. That's evidence. But not one word that a lawyer
22 ever says in a courtroom is evidence. Zero. Z-E-R-O. That
23 spells zero.

24 And that's the single biggest way that a jury can go wrong
25 is by thinking that they heard something out there in the

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1 courtroom that the -- they will say somebody out there said the
2 light was red. And then I hope somebody else on the jury says,
3 *That was just the lawyer talking. No witness ever said that.*
4 *That was just the lawyer talking.*

5 You have to -- these are great lawyers. They're excellent
6 lawyers. But you're going to hear a lot from them, and you
7 must always remember nothing they say is evidence except in the
8 case of a stipulation.

9 Now, if they ask a question *isn't it true the light was*
10 *red* and the witness says *yes, that's true*, then of course
11 that's evidence. But if the lawyer says *isn't it true the*
12 *light was red* and the witness says *I don't know*, is that
13 evidence? No. It's only evidence that the witness doesn't or
14 at least claims not to know.

15 All right. So you over there in the jury box have to not
16 only distinguish between which witnesses are telling the truth,
17 you have to keep separate what the lawyers say versus what the
18 actual evidence is. And then use their opening statements and
19 their closing arguments, because they are great lawyers and
20 they're going to make great openings and great closings and
21 they're very useful for you to hear those, but it's -- none of
22 that will be evidence. Even if they play a snippet from some
23 deposition in their opening statement, it's not evidence yet.

24 All right. So that's what the jury does. And why I'm
25 going into this little speech is you should not be on the jury

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1 if you can't carry out that function. If you're biased toward
2 one side or the other, you shouldn't be on the jury because
3 you've got to be fair to both sides.

4 If you think that you would have trouble following the law
5 because you don't agree with the way the law is, you can't
6 serve because you've got to follow the law as it is, and if you
7 don't like the law, go to Congress. Run for Congress. But
8 don't sabotage what our Congress has done by not following the
9 law. There are plenty of laws that I don't agree with, but I
10 faithfully follow them because I took an oath to do so, and
11 I -- so you've got to do the same thing when you take your
12 oath.

13 All right. So that's my little speech about what the jury
14 does. The jury decides the case. I just cannot say that.
15 It's a very solemn and important responsibility. It is a
16 burden, but it is a monumental important function, and this
17 case has gotten a lot of press. It's gotten a lot of
18 publicity. You get to read all about it after the case is
19 over, but not now. And you will be the one to decide which one
20 of these two big companies is right and which one is wrong.
21 And so your decision will go down in the history books. You've
22 got to do it carefully and without any bias at all.

23 All right. So let me just ask, now that you've heard my
24 talk about -- raise your hand if you think there is something
25 about yourself that would cause you to be unable to do what I

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1 just described. Raise your hand if you think you -- maybe you
2 shouldn't be on this jury.

3 Mr. Mangels, let's get the microphone down to you.

4 **PROSPECTIVE JUROR MANGELS:** I don't know if I'm biased
5 or not, but I just didn't like the way Oracle handled when they
6 took over PeopleSoft and then fired everybody.

7 **THE COURT:** Well, maybe they had good reasons. I
8 don't know. But you tell me, is that going to be -- you're
9 good to raise it, you're right to raise it. But you would have
10 to -- to be on this jury, you've got to realize that PeopleSoft
11 has zero to do with this case. This case involves a different
12 company, Sun, who got acquired by Oracle, and one of the assets
13 was this Java that came with Sun and that's what we're here
14 for. It has nothing to do with PeopleSoft.

15 So now if you're telling me you don't like the way that
16 happened and you would hold it against Oracle, okay, maybe you
17 shouldn't serve on this case. So you've got to tell us, what
18 are you trying to tell us?

19 **PROSPECTIVE JUROR MANGELS:** That's the part I -- I've
20 got to hear things, but it's just the way -- maybe it's the way
21 it was put in through the press the way that some -- PeopleSoft
22 had something. Oracle acquired PeopleSoft and then immediately
23 just shut down the entire operation in Pleasanton and just laid
24 off all the people.

25 **THE COURT:** Okay. Well, maybe they did that, but are

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1 you able to put that out of your mind? Is that going to -- you
2 have to be able to tell me, to be on this jury, *Judge, I'll*
3 *forget about PeopleSoft. I know that has nothing to do with*
4 *this case. I'll decide this case fair and square.* That's Door
5 No. 1.

6 Door No. 2 is, *Judge, I think that's going to influence me*
7 *and I just wouldn't be able to get it out of my mind and I*
8 *would be a little biased in this case.*

9 **PROSPECTIVE JUROR MANGELS:** I think I'm a little biased
10 on that --

11 **THE COURT:** I'm going to excuse Mr. Mangels unless I
12 hear an objection.

13 **MR. VAN NEST:** No objection, Your Honor.

14 **MR. BICKS:** No objection.

15 **THE COURT:** You are excused, Mr. Mangels. You get to
16 go back to the jury assembly room. Thank you for your candor.
17 There is nothing wrong with telling us you had that problem.
18 Okay? Good luck to you, sir.

19 Who is going to replace Mr. Mangels?

20 **THE CLERK:** Okay. It's Meenakshi Subbaraman,
21 S-U-B-B-A-R-A-M-A-N.

22 **THE COURT:** Subbaraman.

23 **PROSPECTIVE JUROR SUBBARAMAN:** Subbaraman.

24 **THE COURT:** How are you today?

25 **PROSPECTIVE JUROR SUBBARAMAN:** I'm very good. Thank

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1 you.

2 **THE COURT:** Just one moment. Let me look at your
3 thing. You get to go take Mr. Mangels' seat.

4 Ms. Subbaraman, do you have any hardship issue?

5 **PROSPECTIVE JUROR SUBBARAMAN:** I don't. But I do have
6 a ticket to leave for Europe on June 9th.

7 **THE COURT:** Okay. That's a Thursday; right?

8 **PROSPECTIVE JUROR SUBBARAMAN:** That is a Thursday.
9 And the flight is at 9:00 a.m.

10 **THE COURT:** I'm going to excuse Ms. Subbaraman. I
11 think we might go that late. All right. Any objection?

12 **MR. BICKS:** No, Your Honor.

13 **MR. VAN NEST:** No objection, Your Honor.

14 **THE COURT:** All right. I hope you have a great
15 vacation.

16 **PROSPECTIVE JUROR SUBBARAMAN:** Thank you.

17 **THE COURT:** Okay. Who's next?

18 **THE CLERK:** All right. Juliusnikko Tamayo Tiongco,
19 t-I-O-N-G-C-O.

20 **THE COURT:** You may have that seat up there. It says
21 here you're in college right now?

22 **PROSPECTIVE JUROR TIONGCO:** Yes.

23 **THE COURT:** Are you missing classes today?

24 **PROSPECTIVE JUROR TIONGCO:** No. But I'm currently
25 enrolled in summer.

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1 **THE COURT:** When do your classes start?

2 **PROSPECTIVE JUROR TIONGCO:** I think it's June 13.

3 **THE COURT:** All right. So between now and June 10th,
4 do you have any classes?

5 **PROSPECTIVE JUROR TIONGCO:** No.

6 **THE COURT:** All right. Do you have any hardship issue
7 you wish to raise?

8 **PROSPECTIVE JUROR TIONGCO:** No.

9 **THE COURT:** Can you see the chart?

10 **PROSPECTIVE JUROR TIONGCO:** Yeah.

11 **THE COURT:** All right. Please give us the
12 biographical information.

13 **PROSPECTIVE JUROR TIONGCO:** My name is Juliusnikko
14 Tiongco. I'm from South San Francisco, California. And I'm in
15 college. I am unemployed. I'm not a part of any organization
16 or any type of stuff like that.

17 My hobbies are running and video games. I'm single. I
18 have no partner. No children. No prior jury service. I have
19 never been in the military or been a witness.

20 **THE COURT:** What are you studying?

21 **PROSPECTIVE JUROR TIONGCO:** Right now I'm just taking
22 my prerequisite classes and I'm still deciding on what to major
23 in.

24 **THE COURT:** Okay. Did you hear my talk about what a
25 jury does?

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1 **PROSPECTIVE JUROR TIONGCO:** Yes.

2 **THE COURT:** All right. Would you have any trouble
3 with being a fair and impartial juror in this case?

4 **PROSPECTIVE JUROR TIONGCO:** No.

5 **THE COURT:** Okay.

6 I'm going to have some random questions here for you.
7 Raise your hand if you have any kind of license other than a
8 driver's license. Like if you had a license to be a plumber,
9 for example, or any other kind of state-issued license, I want
10 you to raise your hand. Okay. We've got several. Okay. Pass
11 the microphone over to Mr. Bruesewitz.

12 **PROSPECTIVE JUROR BRUESEWITZ:** The only license I have
13 is a license for firearms.

14 **THE COURT:** Okay. And down here on the front row.

15 **PROSPECTIVE JUROR:** I'm licensed by the state as a home
16 improvement salesperson.

17 **THE COURT:** Okay. Next over here? And say your name,
18 please.

19 **PROSPECTIVE JUROR JACOBS:** Marion Jacobs. I have a
20 nursing license.

21 **THE COURT:** All right. Then over here. Name, please.

22 **PROSPECTIVE JUROR KOTLAR:** You said license. I don't
23 think this is licensed by the state, but about five years --
24 no. Say seven years ago, I was licensed by a gospel ministry
25 through a church, Foothill Baptist Church.

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1 **THE COURT:** Very good. Thank you.

2 Okay. Just so you know what I'm doing, the lawyers and I
3 have talked in advance about some topics I should raise with
4 you. And so out of caution, I'm going to ask you some
5 questions that -- just to see if any of this strikes a bell.
6 If it does, raise your hand.

7 Okay. Oracle is a sponsor of the America's Cup races. Is
8 there anything about that that might affect your ability to be
9 fair to one side or the other in this case? If so, raise your
10 hand. Some of you may not have even known that, but I suspect
11 there are others of you who do know that. So if you do,
12 regardless, would that affect your ability to be fair and
13 impartial? If you think it might, raise your hand.

14 Okay. No one is raising their hand.

15 Question about Google. How many of you have a smartphone?
16 Raise your hand if you've got a smartphone. Let's see. Okay.
17 It looks like every single one of you. Isn't that interesting.
18 Okay. Put your hand down.

19 Raise your hand if you've got an Android smartphone. So
20 about half of you. Keep your hands up because the lawyers are
21 probably going to want to know. How many of you have an Apple
22 phone? Okay. There you go. If any of you have any other kind
23 of smartphone, raise your hand, like BlackBerry.

24 **PROSPECTIVE JUROR:** I must have Android.

25 **THE COURT:** You have Android. What kind do you have?

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1 **PROSPECTIVE JUROR:** I'm confused between Android and
2 my phone. I don't know maybe is Android or what is the other
3 one?

4 **THE COURT:** Apple.

5 **PROSPECTIVE JUROR:** No. It has Android in my phone.

6 **THE COURT:** Do you have a Samsung phone?

7 **PROSPECTIVE JUROR:** Yes. Samsung.

8 **THE COURT:** Okay. All right. Now, those of you
9 who -- regardless of whether you raised your hand to which one
10 of those questions, the -- maybe you're biased one way or the
11 other in favor or against Android, I don't know. I don't know.
12 Maybe you'd be biased for or against Google on account of its
13 position in the marketplace. And if so, if you think in any
14 way that your familiarity with the phone or a competitor's
15 phone would affect your judgment in this case, you need to
16 raise your hand so we can talk about it.

17 So just to -- who down here had raised -- who is it -- are
18 you an Android person?

19 **PROSPECTIVE JUROR STROMSNESS:** I have both with me so
20 far.

21 **THE COURT:** You have both of them. The record will
22 show you pointed with one finger to your left pocket and one
23 finger to your right pocket.

24 **PROSPECTIVE JUROR STROMSNESS:** yes.

25 **THE COURT:** You've got all bases covered.

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1 **PROSPECTIVE JUROR STROMSNESS:** One is personal and one
2 is work.

3 **THE COURT:** All right. So here's the question I've
4 got for you. And you're Mr. Stromsness.

5 There is going to be -- thank you, Angie. You are going
6 to hear all about Android in this case. But the evidence that
7 you're going to have to base the -- it's like the laboratory
8 again. Your personal phone is not evidence. And what you know
9 from personal experience is not evidence. It's going to be the
10 evidence here in the courtroom that matters.

11 Are you able to decide this case based on the evidence in
12 the case, or do you think you're going to be influenced one way
13 or the other by what you know about the systems?

14 **PROSPECTIVE JUROR STROMSNESS:** I believe I would be
15 able to decide it based on the evidence in the case.

16 **THE COURT:** All right. Do any of the rest of you feel
17 that you would have a problem separating all that out? Okay.
18 No one is raising their hand. Let's move on.

19 How about a company that you're going to hear a large
20 amount in this case about that is called Sun Microsystems that
21 used to be a very prominent company in the Bay Area, but it was
22 acquired by Oracle and is now known as Oracle America so it
23 still exists but has a different name.

24 Back in the era of when it was called Sun, we are going to
25 have a lot of witnesses' testimony about that era. Do any of

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1 you have some connection with Sun or some great fond memories
2 of Sun that might influence you in this case? If so, raise
3 your hand. Okay.

4 Ms. Rocha.

5 **PROSPECTIVE JUROR ROCHA:** I used to work for a work
6 training facility, and Sun Microsystems was one of the
7 companies that were training the people that I served.

8 **THE COURT:** Did you personally go out to Sun's
9 premises?

10 **PROSPECTIVE JUROR ROCHA:** They were -- Sun had an
11 office inside the building where I worked. It was a training
12 program.

13 **THE COURT:** And did you personally interact at Sun?

14 **PROSPECTIVE JUROR ROCHA:** No.

15 **THE COURT:** Do you think the -- that connection will
16 influence you pro or con in this case?

17 **PROSPECTIVE JUROR ROCHA:** No.

18 **THE COURT:** All right. That's fine.

19 Anyone else? Okay. Oh, wait. Wait. Mr. Stromsness.

20 **PROSPECTIVE JUROR STROMSNESS:** I've used a lot of
21 different companies' hardware in the past, including Sun's, but
22 you asked about going to their headquarters. I have been
23 invited to executive briefing centers for most of the tech
24 companies. I have been to most of them. I was at Sun's
25 headquarters once for half a day for a briefing.

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1 **THE COURT:** Is there anything about their hardware or
2 that experience with Sun that would influence you one way or
3 the other in this case?

4 **PROSPECTIVE JUROR STROMSNESS:** I don't believe so.

5 **THE COURT:** Anyone else? Down there. Mr. Haley.

6 **PROSPECTIVE JUROR HALEY:** Just for full disclosure,
7 one of our old buildings was at one point Sun Microsystems'
8 headquarters. We had sold to them. And obviously in that
9 function, we did buy a lot of their hardware back in the day.

10 **THE COURT:** Did you find any secret documents behind
11 the radiator?

12 **PROSPECTIVE JUROR HALEY:** No. Didn't find them.

13 **THE COURT:** You said you bought some of their
14 equipment; right?

15 **PROSPECTIVE JUROR HALEY:** Sure.

16 **THE COURT:** So did you have any particularly good or
17 particularly bad experience with the equipment?

18 **PROSPECTIVE JUROR HALEY:** No.

19 **THE COURT:** Is there any way that equipment is going
20 to influence you in this case?

21 **PROSPECTIVE JUROR HALEY:** No.

22 **THE COURT:** All right. Thank you.

23 Anyone else? Okay. Good.

24 So we know a couple of you already. But raise your hand
25 if you believe you're good with computers. One, two, three --

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1 keep them up high. One, two, three, four, five. Okay. I may
2 let the lawyers just follow up themselves. All right. Put
3 your hands down.

4 Raise your hands if you subscribe to any computer
5 magazines. Zero. Okay.

6 How about if you subscribe to some computer magazine
7 online, raise your hand. No one does that. Okay.

8 How many of you can program in any language whatsoever,
9 even in the simplest languages? How many of you can program in
10 software, write code? One -- one person. Okay.

11 And how many of you have ever heard of application program
12 interface? One, two. Okay. All right.

13 **PROSPECTIVE JUROR:** Excuse me, Your Honor.

14 **THE COURT:** Three.

15 **PROSPECTIVE JUROR:** Just the term --

16 **THE COURT:** Have you ever heard that term, application
17 program interface?

18 **PROSPECTIVE JUROR:** Maybe. I don't know.

19 **THE COURT:** You don't know.

20 Mr. Haley, you have heard of it?

21 **PROSPECTIVE JUROR HALEY:** Yes, sir.

22 **THE COURT:** Okay. In what context did you hear about
23 it?

24 **PROSPECTIVE JUROR HALEY:** Work-related. You know,
25 back in the day, we used to do a lot of COTS program -- COTS

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1 software development programs where you have to have a lot of
2 interfaces between the different software that you'd buy.

3 **THE COURT:** All right.

4 **PROSPECTIVE JUROR HALEY:** And then just general
5 knowledge just from reading.

6 **THE COURT:** Okay. Now, this case involves -- it's
7 already an established fact in this case that Oracle America
8 has a copyright on certain aspects that are at issue in this
9 case on what we are going to refer to as an application
10 programming interface, and more particularly, declaring lines
11 of code. So let me just stop there.

12 Have you ever heard the phrase *declaring line of code*?

13 **PROSPECTIVE JUROR HALEY:** No.

14 **THE COURT:** How about you, Mr. Stromsness? Do you
15 know what a declaring line of code is?

16 **PROSPECTIVE JUROR STROMSNESS:** Yes, I do.

17 **THE COURT:** Okay. Now, again, I have to ask you this
18 question, is there anything about that body of knowledge that
19 you already have which is going to cause you to be biased one
20 way or the other in this case?

21 **PROSPECTIVE JUROR STROMSNESS:** I do not believe so.

22 **THE COURT:** Okay. How many of you have ever heard of
23 the term *open source software*? *Open source software*? One,
24 two, three. Okay.

25 Mr. Stromsness, what have you heard about that term?

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1 **PROSPECTIVE JUROR STROMSNESS:** I've worked at U.C.

2 Berkeley and Lawrence Berkeley National Lab, and they are known
3 to some extent for the Berkeley system distribution and
4 Berkeley Internet name daemon for open source package of
5 software from the 80s that are very popular', so I know some of
6 the people who worked on the periphery of those projects over
7 the course of the years.

8 **THE COURT:** All right. Well, now, the open source
9 software is a -- tell me -- you, I'm sure, know more than I do
10 about this so I'm going to ask you, is this something that is
11 controversial within the programmer profession, the term *open*
12 *source*?

13 **PROSPECTIVE JUROR STROMSNESS:** I don't think the term
14 is particularly controversial.

15 **THE COURT:** But the concept?

16 **PROSPECTIVE JUROR STROMSNESS:** I think it's pretty
17 well established now. It was more controversial, I think, 20
18 years ago. I think pretty much all the companies that have
19 paid software now also support open source software of one form
20 or another as well.

21 **THE COURT:** So in this case, there is going to be
22 testimony and evidence about -- in the background about open
23 source software. Can you decide the case based on what the
24 evidence here is in the courtroom, or are you going to be
25 filling in the blanks with what you know about it yourself?

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1 **PROSPECTIVE JUROR STROMSNESS:** I think I can base it
2 just on what's in the courtroom.

3 **THE COURT:** All right. Now, again, I need to say the
4 plaintiff here, which is Oracle, it is established and we can't
5 deviate from the fact that unless fair use is established in
6 this case, Oracle has the right to enforce its copyright and it
7 does not have any duty to do any open source whatsoever.
8 That's going to be the law.

9 So the issue is going to come down solely to whether or
10 not Google can carry the burden of proof to show fair use.
11 Maybe it can; maybe it can't. I don't know. That's for the
12 jury.

13 But you can't be substituting your judgment in saying
14 *well, I like open source so I'm going to go with open source*
15 and that's -- that's not -- we're past that. Do you understand
16 that?

17 **PROSPECTIVE JUROR STROMSNESS:** I do.

18 **THE COURT:** But we're going to hear evidence about it
19 anyway because it relates to some of the other issues. All
20 right?

21 **PROSPECTIVE JUROR STROMSNESS:** Yes.

22 **THE COURT:** Again, I ask you will you decide the case
23 fairly and impartially based on what happens here in the
24 courtroom?

25 **PROSPECTIVE JUROR STROMSNESS:** Yes.

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1 **THE COURT:** Okay. Anybody ever heard of the term *open*
2 *source software*? Okay.

3 Mr. Bruesewitz, your turn. How did you hear about it?

4 **PROSPECTIVE JUROR BRUESEWITZ:** This was just during,
5 you might say, academia. A lot of lottery searchers at
6 different universities were using open source software to
7 actually transmit and give people options of looking at things.

8 **THE COURT:** Did you hear what I said to
9 Mr. Stromsness, our No. 1 juror down here? Did you hear our
10 conversation?

11 **PROSPECTIVE JUROR BRUESEWITZ:** Yes.

12 **THE COURT:** Are you able to put to one side what you
13 heard in your life on open source and base the case solely on
14 what you hear in the courtroom?

15 **PROSPECTIVE JUROR BRUESEWITZ:** I am.

16 **THE COURT:** Will you do that fairly and impartially?

17 **PROSPECTIVE JUROR BRUESEWITZ:** Yes.

18 **THE COURT:** Who else raised their hand?

19 Mr. Haley, same questions to you.

20 **PROSPECTIVE JUROR HALEY:** Mostly just general
21 knowledge, and I don't think there would be an issue with
22 deciding on the evidence presented.

23 **THE COURT:** All right. Thank you. Okay.

24 A different question. How many of you have ever worked in
25 new product development? New product development. If so,

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1 raise your hand.

2 Mr. Haley, you've been a busy man in your life. Tell us
3 about your new product development.

4 **PROSPECTIVE JUROR HALEY:** Well, as part of my
5 responsibilities in the corporation, one of the things we did
6 was managing the IRD budget and so one of my principal
7 functions was to assess where we should spend our dollars and
8 the expected outcome of those expenditures and how to measure
9 that.

10 So it was basically looking at, you know, the market
11 return, the competing products out there, and the whole life
12 cycle of the investment.

13 **THE COURT:** All right. Will that in any way influence
14 your ability to decide this case fairly and squarely?

15 **PROSPECTIVE JUROR HALEY:** No.

16 **THE COURT:** Okay. Thank you.

17 Anyone else on new product development?

18 Yes, Ms. Hines?

19 **PROSPECTIVE JUROR HINES:** So at Pacific Gas &
20 Electric, we are a utility, so our products are mainly
21 regarding options for customers, so I have worked on *customize*
22 *your payment schedule* and what we're calling the rate mailer.
23 So different avenues that we're outreaching to customers and,
24 you know, products that a utility could offer.

25 **THE COURT:** All right. Same question. Can you put

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1 that to one side and decide the case here solely on the
2 evidence here in the courtroom?

3 **PROSPECTIVE JUROR HINES:** Yes.

4 **THE COURT:** And do that impartially for both sides?

5 **PROSPECTIVE JUROR HINES:** Yes.

6 **THE COURT:** Okay. Thank you.

7 Different question. Have any of you ever been involved in
8 licensing of intellectual property, patents, copyrights,
9 trademarks, trade secrets, anything like that? Licensing. All
10 right.

11 Again, Mr. Haley.

12 **PROSPECTIVE JUROR HALEY:** Same thing, part of my
13 responsibilities in my work career was to basically assess
14 the -- the licensing costs as part of the budgeting exercise
15 and whether or not it was worth our effort.

16 **THE COURT:** Do you have any legal background?

17 **PROSPECTIVE JUROR HALEY:** Only through business law as
18 part of my educational background and then of course some of my
19 responsibilities had a very tight interplay with the legal
20 organization. I was responsible for contract negotiations, the
21 business terms and conditions, that sort of thing.

22 **THE COURT:** Did you ever actually read one of these
23 license agreements?

24 **PROSPECTIVE JUROR HALEY:** Not a license agreement so
25 much, but I have read a number of patents.

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1 **THE COURT:** Okay. How about copyrights? Ever have
2 any experience with copyrights?

3 **PROSPECTIVE JUROR HALEY:** Not directly, no, sir.

4 **THE COURT:** Okay. There is no patents in this case,
5 so this is strictly a copyright case.

6 **PROSPECTIVE JUROR HALEY:** Understood.

7 **THE COURT:** All right. Anyone else want to raise
8 their hand to that question about licensing? Okay. No one.

9 All right. So let me ask a question I normally would not
10 ask, but because of the length of this trial, you know, I've
11 told you that you cannot, you must not, cannot do Google
12 research or any kind of research about this case, even though
13 you would be tempted to do that until you are at the end and
14 discharged and the case is over. Then you can do all the
15 research you want. And you can even hold a press conference,
16 whatever you want to do. At that point, there is no
17 admonition, no restriction. But until that point, you would
18 have to be true blue to what I told you.

19 Now, I've had some jurors who just can't do that. They
20 just -- they get on their phone, they say, *The judge will never*
21 *know. I'll just do this anyway.* We find out one way or the
22 other.

23 If you think you just can't help it and you would violate
24 that direct order not to go do research about the case, I want
25 you to raise your hand now because we need to talk about it.

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1 Okay.

2 Mr. Tiongco, let's hear what you have to say.

3 **PROSPECTIVE JUROR TIONGCO:** Well, I spend a lot of
4 time on the Internet and I find this trial a little interesting
5 so I might be tempted to search it up once I get home.

6 **THE COURT:** Yeah. Okay. Now, when you're there, what
7 would you do? Be sitting in a nice easy chair and TV going in
8 the background and you look around, you see *the judge can't see*
9 *me here*; right? So you would be thinking *okay, I'm going to*
10 *put in some keywords about this case*. That's what you're
11 saying you might do that; right?

12 **PROSPECTIVE JUROR TIONGCO:** Yes.

13 **THE COURT:** And would you even think about the fact
14 that I told you -- that I have given you a direct order not to
15 do that?

16 **PROSPECTIVE JUROR TIONGCO:** Yes, I would, but it would
17 be really hard not to, like, search it up.

18 **THE COURT:** So that's a problem. You know, I'll just
19 tell you, there is propaganda out there on the Internet about
20 this case both ways. And if you were to read one of the
21 propaganda for one side or the other side and be influenced by
22 that, it would be a travesty of justice because those people
23 are just propagandists, and they -- first of all, that's number
24 one.

25 Number two, half of them don't know what they're talking

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1 about. That's the other thing.

2 And number three and most important, it's outside the
3 evidence in the case.

4 So you're telling me, though, notwithstanding my little
5 lecture here, you're going to do it anyway? Is there a 50/50
6 chance that you would do it?

7 **PROSPECTIVE JUROR TIONGCO:** I think so.

8 **THE COURT:** I'm going to excuse him, unless there is
9 an objection?

10 **MR. VAN NEST:** No objection, Your Honor.

11 **MR. BICKS:** No, Your Honor.

12 **THE COURT:** I want you to know there are other big
13 antitrust cases that are going to go even longer than five
14 weeks. Maybe we can get you into one of those. And it may be
15 they don't care whether you're trying to look them up because
16 it's a nobody case and nobody cares about it and there is
17 nothing on the Internet anyway.

18 So I hope you get on one of those cases, but this is not
19 the case for you.

20 So you go back to the jury assembly room and tell them
21 what happened. Thank you, sir. Thank you for being candid.

22 Let's replace that seat.

23 **THE CLERK:** Barbara Kreslake, K-R-E-S-L-A-K-E.

24 **THE COURT:** How do you spell that?

25 **THE CLERK:** K-R-E-S-L-A-K-E.

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1 **THE COURT:** Kreslake.

2 Is that right, Kreslake?

3 **PROSPECTIVE JUROR KRESLAKE:** Yes.

4 **THE COURT:** Kreslake. All right. Let's see your
5 write-up. Okay. You get to have that last seat over there.
6 And here's this.

7 Ms. Kreslake, may I give you the microphone. Who has
8 that? Welcome to the jury box. How are you today?

9 **PROSPECTIVE JUROR KRESLAKE:** Fine. Thank you.

10 **THE COURT:** Good. Do you have a hardship issue?

11 **PROSPECTIVE JUROR KRESLAKE:** No.

12 **THE COURT:** Can you see that chart from that distance?

13 **PROSPECTIVE JUROR KRESLAKE:** Yes.

14 **THE COURT:** Please give us the info.

15 **PROSPECTIVE JUROR KRESLAKE:** my name is Barbara
16 Kreslake. I live in San Carlos. I have an Associate's degree.
17 I'm a homemaker. Previously years ago I was San Mateo County
18 Community College. No organizations, although my husband is
19 involved in the union and I help out.

20 Hobbies, yoga, swimming, hiking. I'm married. My husband
21 is retired from the U.S. Postal Service and previously he was a
22 metrologist at United Airlines.

23 I have three children: 43 and 38 and 36. The oldest is
24 airline occupation. The second one is a researcher. She just
25 started a new company in Bethesda, Maryland. And the third one

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1 is international relations and she's searching for a job.

2 No prior jury service. No military or law enforcement.

3 And I have never been a witness.

4 **THE COURT:** Great. Did you hear all the questions I
5 asked?

6 **PROSPECTIVE JUROR KRESLAKE:** Yes.

7 **THE COURT:** Would you have raised your hand to any of
8 those?

9 **PROSPECTIVE JUROR KRESLAKE:** No.

10 **THE COURT:** Did you hear my description about what the
11 jury does?

12 **PROSPECTIVE JUROR KRESLAKE:** Yes.

13 **THE COURT:** And would you be able to faithfully and
14 impartially carry out that responsibility?

15 **PROSPECTIVE JUROR KRESLAKE:** Yes.

16 **THE COURT:** All right. Thank you.

17 So just -- I'm getting close to where I'm going to turn
18 the questioning over for a while to the lawyers. And just so
19 you'll know, the lawyers have a copy of your questionnaire.
20 And they may -- it's okay if they ask you questions about it.

21 Every now and then, it's rare, but I would say if you have
22 something highly personal and private that you feel like you
23 should tell us about, then -- but you want to do it just with
24 me and the lawyers at what's called a sidebar, I will allow
25 that. I discourage it, but I will allow it if you really want

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1 it. So I want you to know that that opportunity is there.

2 So at this time, I'm going to let -- Mr. Bicks, are you
3 ready? Are you going to be the one?

4 **MR. BICKS:** Yes, Your Honor. Thank you.

5 **THE COURT:** Why don't you do this. Reintroduce
6 everyone at your table so we all have in mind who everyone is
7 at your table and then you get the floor for a while.

8 **MR. BICKS:** Thank you.

9 So I guess it's good morning. So at our table, this is
10 Matt Sarboraria from Oracle and Georges Saab also from Oracle,
11 and Gabe Ramsey, who works with me at Orrick Herrington, and
12 Lisa Simpson and Annette Hurst and Mark Phillips.

13 **THE COURT:** You know, a question I forgot to ask, and
14 maybe you could do it for me and I will give you a couple extra
15 minutes, is whether or not anybody knows any of the lawyers or
16 the judge or the court personnel. I forget to ask that. If
17 you wouldn't mind doing that for me, I would appreciate it.

18 **MR. BICKS:** So as I say, I'm from Orrick Herrington,
19 and I guess I should ask everyone here, does anyone know any of
20 the folks here who are with me or anyone at our firm or anyone
21 in the Court, any of the Court personnel?

22 **THE COURT:** Okay. Thank you. Over there,
23 Ms. Kreslake.

24 **PROSPECTIVE JUROR KRESLAKE:** Our next-door neighbor
25 works for Oracle and my closest friend used to work for Oracle.

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1 **MR. BICKS:** Understood. And actually when I say
2 *Orrick*, our firm is called Orrick Herrington. Our client is
3 Oracle.

4 **PROSPECTIVE JUROR KRESLAKE:** I see, okay.

5 **MR. BICKS:** And in terms of Ms. Kreslake, the folks
6 that you know from Oracle, is that something that in any way is
7 going to influence you in the case?

8 **PROSPECTIVE JUROR KRESLAKE:** No.

9 **MR. BICKS:** All right. Thank you.

10 So this is a great opportunity for me -- and thank you,
11 Your Honor. This will be really the only time that I would get
12 to speak with you directly, and I really appreciate it.

13 I'm going to ask some individual follow-up questions and
14 then some more general questions, and if I don't ask an
15 individual question, it's just because we've got time here and
16 I want to go as efficiently as I can.

17 Mr. Stromsness, can I just start with you, sir?

18 **PROSPECTIVE JUROR STROMSNESS:** Sure.

19 **MR. BICKS:** You, I think, have indicated in your
20 questionnaire that you've read -- you've heard a little bit
21 about this case, and I want to just ask you what kind of
22 details have you heard?

23 **PROSPECTIVE JUROR STROMSNESS:** Not very many. I mean,
24 I've seen it in headlines and seen some stories about it. It's
25 been a while. I didn't realize the case was still going on. I

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1 don't really remember what has gone on in the case, but I knew
2 that there was a lawsuit about Android.

3 **MR. BICKS:** You mentioned, I think, something called
4 the EFF. Tell me what that is.

5 **PROSPECTIVE JUROR STROMSNESS:** I don't remember
6 exactly what it stands for. It's an Internet freedom group. I
7 think E stands for *electronic*. But -- and I had started
8 supporting them when they were supporting some websites back in
9 the day that had gay and lesbian conduct that people tried to
10 get taken down. And so I've given them, I think, maybe 225
11 bucks per year since then.

12 **MR. BICKS:** Any knowledge of any positions any
13 organizations like that have taken in any way about this case?

14 **PROSPECTIVE JUROR STROMSNESS:** No.

15 **MR. BICKS:** Thank you.

16 Let me, Mr. Haley, just speak with you for a moment.

17 In terms of your experience that you mentioned in
18 connection with overseeing of litigation, things like that, can
19 you just describe a little bit what exactly you were doing? I
20 think you were overseeing some patent litigation, things of
21 that nature?

22 **PROSPECTIVE JUROR HALEY:** Well, general. If it had
23 actually gone to litigation, I would be sort of behind the
24 scenes. I would be sitting down with the lawyers and
25 understanding the strategy. One of my functions was on the

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1 accounting side of it, I had to try to figure out what the risk
2 assessment was, and obviously if there was an issue associated
3 that had a financial impact, I had to capture that somehow in
4 financials.

5 In terms of the overview of the budgeting process, my
6 recollection was we had a fairly sizeable line item in the
7 indirect budget for patents, and so the whole aspect of
8 retaining and the dollar expended, as well as the employee
9 rewards for achieving a patent, were part of my overview. I
10 wouldn't say I was the decision-maker, but I was one of two or
11 three.

12 **MR. BICKS:** Any attitudes on patent lawsuits in
13 general? Some people say there are too many; people shouldn't
14 be bringing these kind of cases. Some people have different
15 views.

16 Do you have views one way or the other on that?

17 **PROSPECTIVE JUROR HALEY:** On the patent side, I
18 guess -- I did have one bad experience. We lost a very large
19 patent lawsuit. It was litigated after I had already left the
20 firm, but the -- all the runup to it was under my watch. It
21 was sort of a surprise what the Patent Office would issue
22 patents for. And the conflict was really around industry
23 practice versus something that was patentable, and it also got
24 involved with co-development.

25 **MR. BICKS:** With what? I'm sorry.

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1 **PROSPECTIVE JUROR HALEY:** Co-development. Our typical
2 contracts would have basically in the contract itself -- it
3 would call for whoever brought the idea owned the idea, and if
4 it was jointly developed, then it was split, and of course in
5 my world, the products we built had very much a collaborative
6 aspect to it in terms of defining and developing the product
7 between the customer and the manufacturer.

8 **MR. BICKS:** And so given -- the judge briefed a little
9 bit about the case. How do you think, if at all, that
10 experience might impact how you come to this case?

11 **PROSPECTIVE JUROR HALEY:** I think it gives me a
12 certain level of familiarity with some of the legalese and some
13 of the arguments that lawyers put forth, but I have no
14 knowledge of specifics on this particular case.

15 **MR. BICKS:** Thank you.

16 And is it Mr. Kotlar?

17 **PROSPECTIVE JUROR KOTLAR:** Yes.

18 **MR. BICKS:** So you indicate that I think you have
19 heard something about this case?

20 **PROSPECTIVE JUROR KOTLAR:** You know, something in
21 passing in the news. I don't know if I paid attention. You
22 know, Channel 2, Dave Clark. You know that dude? I might have
23 been getting ready for work or help my wife get ready for work
24 and might have heard something about the case, but no
25 specifics. The dollar amounts were here. I didn't know there

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1 was that much money being haggled over before I got to this
2 courtroom. So I don't -- I might have, but I'm not actually
3 sure.

4 **MR. BICKS:** Anyone else hear anything about the case
5 that would be worth discussing? Anyone read anything, seen
6 anything about it? Thank you.

7 Ms. Harper.

8 **PROSPECTIVE JUROR HARPER:** Yes.

9 **MR. BICKS:** So I think you indicate that your brother
10 has some contact with Oracle.

11 **PROSPECTIVE JUROR HARPER:** My understanding is he just
12 started working for -- my understanding is he just started
13 working for them again. He has worked for several of the large
14 software companies. He is a computer programmer and works with
15 new product development.

16 **MR. BICKS:** You're understanding is he works at Oracle
17 now?

18 **PROSPECTIVE JUROR HARPER:** Correct.

19 **MR. BICKS:** Okay.

20 **PROSPECTIVE JUROR HARPER:** Oracle America. I'm not
21 sure which.

22 **MR. BICKS:** Understood.

23 **PROSPECTIVE JUROR HARPER:** Brand new job.

24 **MR. BICKS:** Where does he work? Do you know?

25 **PROSPECTIVE JUROR HARPER:** I don't. He just mentioned

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1 it when we saw him at Easter.

2 **MR. BICKS:** I understand.

3 **PROSPECTIVE JUROR HARPER:** He lives in the East Bay.

4 **MR. BICKS:** How do you think -- we represent Oracle.
5 And Google's on the other side. Do you think that situation
6 with your brother could influence your views on this case?

7 **PROSPECTIVE JUROR HARPER:** I do not. Obviously I felt
8 like full disclosure was necessary.

9 **MR. BICKS:** Yes. Thank you.

10 **PROSPECTIVE JUROR HARPER:** On the jury, you make a
11 commitment to review the facts as set forth, so . . .

12 **MR. BICKS:** I'll try to pronounce it right.
13 Ms. Calonsag. You mentioned Sureline Systems?

14 **PROSPECTIVE JUROR CALONSAG:** Yes.

15 **MR. BICKS:** Tell me a little bit about that company
16 again.

17 **PROSPECTIVE JUROR CALONSAG:** To be honest, I'm not
18 really that familiar with the high tech. It's -- my husband
19 throws a lot of high tech jargon, but it's a little confusing
20 to me. It has something to do with platforms. So that's as
21 far as I know.

22 **MR. BICKS:** Thank you.

23 And, Ms. Hines, I think you have indicated that you have
24 had some contact with Oracle. Any part of that experience that
25 might color you being on this case if you ended up on it?

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1 **PROSPECTIVE JUROR HINES:** No.

2 **MR. BICKS:** Let me ask just more generally about
3 Oracle and hear folks' attitudes about Oracle. Many of you may
4 have heard, obviously, about Oracle cloud computing, database,
5 hardware. The question that is really on our mind, both sides,
6 is having people that won't lean really one way or the other.

7 Any folks kind of have negative feelings about Oracle? It
8 won't hurt my feelings if you say it. But anyone here kind of
9 have negative feelings about Oracle?

10 (A show of hands by the prospective jurors in the box)

11 **MR. BICKS:** Anyone here heard of Mr. Ellison?

12 (A show of hands by the prospective jurors in the box)

13 **MR. BICKS:** And anyone, based on that information, you
14 know, have opinions or thoughts of him that kind of lean on the
15 negative side based on any of that? How about on the positive
16 side? Tell me -- tell me about that.

17 **THE COURT:** Say your name again, so the record will be
18 clear.

19 **PROSPECTIVE JUROR BRUESEWITZ:** Jonathan Bruesewitz.
20 Anybody who can buy Lanai, I mean, come on. I'm a golfer so
21 that's kind of cool.

22 **THE COURT:** Anybody who can buy what?

23 **PROSPECTIVE JUROR BRUESEWITZ:** He purchased Lanai, the
24 island in Hawaii.

25 **THE COURT:** All right. Okay. I just didn't

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1 understand what you said. I got it.

2 **MR. BICKS:** And remind me again, the folks that we
3 discussed the topic of open source. And, Mr. Stromsness, I
4 remember you knew about it; Mr. Haley; and Mr. Bruesewitz.

5 So on the question of open source, do you -- do either --
6 any of you have views on whether or not software, just as an
7 attitude view, should be given away for free, that are leaning
8 one way or the other on that? If I asked you Mr. Stromsness,
9 what were your views on that, would -- help me out.

10 **PROSPECTIVE JUROR STROMSNESS:** I don't think I have
11 anything philosophical about the question. I mean, I think
12 that we need high-quality software that's secure and that
13 probably always means someone is working on making it secure.
14 Whether that's because it's, you know, commercially licensed
15 software or just because things like, you know, Linux where
16 lots of companies want to put time into it, I don't think it
17 really matters as long as you can get quality software.

18 **MR. BICKS:** I would love to hear, Mr. Haley, any
19 thoughts from you on this?

20 **PROSPECTIVE JUROR HALEY:** Well, as you might imagine,
21 my first thought is how do they make money.

22 **MR. BICKS:** Yeah.

23 **PROSPECTIVE JUROR HALEY:** But I understand there is a
24 lot of different models out there. When I hear something is
25 being given away for free, that's the first place my mind goes.

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1 **MR. BICKS:** And, Mr. Bruesewitz, what are you thoughts
2 on that?

3 **PROSPECTIVE JUROR BRUESEWITZ:** I don't really have an
4 opinion either way. It was just in academia that I heard about
5 it.

6 **MR. BICKS:** The judge mentioned Java, but not coffee.
7 But folks here have familiarity with Java? Heard about it?

8 **THE COURT:** Raise your hands a little higher, please.

9 **MR. BICKS:** So let's go one by one. Tell me, sir,
10 Mr. Stromsness, your experience.

11 **PROSPECTIVE JUROR STROMSNESS:** In 1994, '95 in computer
12 science, the class started out trying to program in Java, but
13 then decided it wasn't mature enough at the time and we moved
14 back to C++. Since then, I have mainly been involved in
15 patching it on my work stations.

16 **MR. BICKS:** Say it again. You said you have mainly
17 been involved with what?

18 **PROSPECTIVE JUROR STROMSNESS:** Patching it. Updating
19 it as new updates come out.

20 **MR. BICKS:** Do you have views about Java, good, bad,
21 things of that nature?

22 **PROSPECTIVE JUROR STROMSNESS:** I mean, it's software.
23 It's a useful tool. Lots of people use it. They do
24 conferencing software frequently.

25 **MR. BICKS:** Thank you.

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1 Ms. Rocha, did you tell me your experience with Java?

2 **PROSPECTIVE JUROR ROCHA:** Just on my computer.

3 Telling me to update the Java updates. That's about it.

4 **MR. BICKS:** And do you do the updates and things like
5 that?

6 **PROSPECTIVE JUROR ROCHA:** Yes. I allow it.

7 **MR. BICKS:** And, Ms. Shattuck, did you --

8 **PROSPECTIVE JUROR SHATTUCK:** Yeah. Recently I've been
9 trying to do something with my computer at home, and I don't
10 even have the right words to say what it is it's telling me.
11 But it's telling me that I don't have Java or Java's
12 misbehaving and I need to update. Maybe that was what it was
13 telling me to do.

14 And I've had a lot of trouble doing what it told me what
15 to do. So maybe I've been a little impatient with whoever
16 wrote the directions for Java. Like, I don't get it. And it's
17 frustrating. But I have every confidence that in my lifetime,
18 I will figure it out. Maybe.

19 **MR. BICKS:** Mr. West, share with us your experience.

20 **PROSPECTIVE JUROR WEST:** Using Java, I just know of it
21 from general computer use. Nothing more than that.

22 **MR. BICKS:** Do you work with it in any kind of
23 frequency?

24 **PROSPECTIVE JUROR WEST:** Not that I know of.

25 **MR. BICKS:** And, Mr. Wong, tell me your experience.

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1 **PROSPECTIVE JUROR WONG:** To me, Java is just add-on
2 software that they -- it pops up on your computer. I really
3 don't know what it does. If I don't really need it for the
4 application I'm using, I'll pass on it.

5 **MR. BICKS:** Thank you.

6 Ms. Jacobs, do you?

7 **PROSPECTIVE JUROR JACOBS:** As much as I know, it's a
8 computer term. I couldn't tell you much further than that.

9 **MR. BICKS:** Mr. Haley, I bet you know a lot about it.

10 **PROSPECTIVE JUROR HALEY:** I know a lot about a lot of
11 things, very thin, though. So I don't know a whole lot of
12 depth.

13 I seem to recall that Java was developed by Sun and was
14 giving it back away, back in the late '60s -- late '90s, I
15 believe. I do know it's one of the skill sets we often
16 advertise when we're looking for employees in the software
17 area.

18 **MR. BICKS:** Mr. Kotlar, do you have experience with --

19 **PROSPECTIVE JUROR KOTLAR:** Perhaps, but I have more
20 experience with java that you drink than Java on a computer,
21 but I don't like either one -- I don't know about Java, but I
22 don't like coffee myself.

23 **MR. BICKS:** Thanks.

24 Ms. Kreslake.

25 **PROSPECTIVE JUROR KRESLAKE:** The only experience is

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1 with updating, which I agree. I have had problems with it.
2 That's about it.

3 **MR. BICKS:** Ms. Hines, .

4 **PROSPECTIVE JUROR HINES:** Same with me, just updating,
5 make sure the script is the updated version especially so you
6 can use it. Especially at PG&E, we have a lot of secure
7 networks. So dealing with it at home and work, as well.

8 **MR. BICKS:** Ms. Calonsag.

9 **PROSPECTIVE JUROR CALONSAG:** Same answer. It just
10 comes up on my computer every now and then that it needs to be
11 updated.

12 **PROSPECTIVE JUROR SETTLES:** Just familiar as a
13 computer term. I haven't had any problem with it one way or
14 the other.

15 **MR. BICKS:** Thank you.

16 **PROSPECTIVE JUROR BRUESEWITZ:** My company uses Oracle
17 with obviously Java for their APAR through my work. I don't
18 work with it directly, but I know we use it.

19 **MR. BICKS:** Any experiences one way or the other that
20 would kind of --

21 **PROSPECTIVE JUROR BRUESEWITZ:** Like I said, I don't
22 really use it, so . . .

23 **MR. BICKS:** I didn't mean to skip you, Ms. Brown.

24 **PROSPECTIVE JUROR BROWN:** I have no knowledge about
25 Java. I just saw it on a billboard. That's it.

JURY VOIR DIRE

1 **MR. BICKS:** Thank you.

2 Mr. Roberds?

3 **PROSPECTIVE JUROR ROBERDS:** I've no familiarity with
4 it. Just familiar with updating it. I don't even know what it
5 does.

6 **MR. BICKS:** Thank you.

7 Ms. Harper.

8 **PROSPECTIVE JUROR HARPER:** Only as an end user.

9 **MR. BICKS:** Thank you.

10 Let me turn to the topic of Google. As the judge has
11 indicated, we're Oracle. Google is over here.

12 How many folks on the -- sitting in front of me have
13 experience and use Google things on kind of a regular basis, by
14 a show of hand?

15 **MR. BICKS:** I'm sorry, Ms. Brown, I couldn't hear you.

16 **PROSPECTIVE JUROR BROWN:** Is it on the phone? On the
17 phone? I don't use computer.

18 **THE COURT:** Are you -- we need the microphone to you.
19 But are you saying -- are you asking --

20 **PROSPECTIVE JUROR BROWN:** I'm asking if it's in
21 computer or because it's always on the phone that there is --

22 **THE COURT:** She is asking are you talking about on the
23 desktop computer? Are you talking about on the phone? She is
24 confused.

25 **PROSPECTIVE JUROR BROWN:** And there is Google on the

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1 phone.

2 **MR. BICKS:** Do you have experience with on the phone
3 or the desktop?

4 **PROSPECTIVE JUROR BROWN:** No. Actually, I'm
5 illiterate when it comes to computer, but I know how to talk to
6 Google and some of the things on my phone.

7 **MR. BICKS:** So if I put out the question how many
8 people think Google is an innovative company, you know, that
9 has done things that really made a big difference, by a show of
10 hands, how many people would say that that's true?

11 So if I compared -- how many people, if I asked the same
12 folks, who said Google is an innovative company, if I asked is
13 Oracle an innovative company, how many, by show of hands --
14 what would folks say?

15 And to those of you who I think I can see are raising
16 hands both ways, does any one of you think that when you look
17 at kind of Google and Oracle together, kind of starting out at
18 the starting line, that Google would be starting out a little
19 bit ahead, you know, because of experiences that you've had
20 kind of compared to Google? And it may not necessarily be
21 strong, but kind of starting out a little bit ahead?

22 **THE COURT:** You mean in this trial?

23 **MR. BICKS:** Yes.

24 **THE COURT:** So --

25 **MR. BICKS:** Yes.

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1 **THE COURT:** Let's be clear. What counsel is asking is
2 are there any of you over there who would think in your own
3 mind that in your own mind, Google has a slight advantage over
4 Oracle merely because of your impressions of the companies
5 going in?

6 That's what you're asking; right?

7 **MR. BICKS:** Yes.

8 **THE COURT:** Raise your hand if you think in your own
9 mind that's true.

10 **MR. BICKS:** Let me talk a little bit about the
11 question of damages.

12 (No hands raised)

13 **MR. BICKS:** The Court mentioned in the beginning that
14 this is a case involving a large amount of damages and that
15 will be the request from Oracle, and the judge will instruct on
16 the law and things of that nature.

17 But my question is I would like to explore people's
18 attitudes about damages. This case is a case that Oracle's
19 position is that it involves damages that involve billions of
20 dollars. I think the Court mentioned that.

21 When anybody heard that, did they kind of cringe a little
22 bit and say wow, you know, that's -- that hits you in a way
23 that you kind of think doesn't sound right? Anyone kind of
24 have that reaction when they heard that?

25 Anyone have kind of attitudes that businesses should work

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1 things out and shouldn't come into court and ask for a lot of
2 money? Anyone kind of have those views? Nobody has views on
3 big damages?

4 **THE COURT:** Ms. Hines -- Ms. Hines; right?

5 **PROSPECTIVE JUROR HINES:** Yes.

6 **THE COURT:** Ms. Hines raised her hand.

7 **PROSPECTIVE JUROR HINES:** Obviously the company that I
8 work for is also under trial to go to federal court. We just
9 got postponed. Lots of money is involved as well for the
10 San Bruno accident that had occurred.

11 **MR. BICKS:** Yes.

12 **PROSPECTIVE JUROR HINES:** So they give us updates on
13 the trial that's happening as well, PG&E employees, to kind of
14 know as they know what's going on. Similar talk is going on at
15 my work as well.

16 **MR. BICKS:** So what are your, Ms. Hines, just general
17 kind of attitudes? You heard a mention of what this case
18 involved. What do you think?

19 **PROSPECTIVE JUROR HINES:** It was interesting how kind
20 of I feel, especially at my company; right? You know both
21 sides of the story, kind of how you feel as an employee versus
22 also how you feel of the situation that had occurred itself.
23 So it just was bringing up that for me, mainly what we're
24 dealing with at work and kind of how it feels in the courtroom
25 versus what you feel as an employee.

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1 **MR. BICKS:** Ms. Kreslake, the question of damages,
2 when you heard the numbers involved, what was your reaction?

3 **PROSPECTIVE JUROR KRESLAKE:** I really don't have a
4 problem with that. I mean, bringing it to court. We live in
5 America. This is the right of every citizen and company, so I
6 don't -- I really didn't think one way or another in the amount
7 of damages because big companies, worth a lot of money.

8 **MR. BICKS:** And, Mr. Kotlar, I can see you nodding.

9 **PROSPECTIVE JUROR KOTLAR:** Oh, well, I was thinking
10 about the case. Like I mentioned when the judge asked a
11 question about the prior jury service, that you know, if it's
12 warranted, you know, based on the case and the facts of the
13 case, if the party is -- is deemed worthy of the damages, then
14 we had to find for -- ours was just a preliminary hearing. It
15 was going to another -- to see what -- and so we found for, I
16 think, millions of dollars because mesothelioma is incurable,
17 I suppose. That's a different kind of damage.

18 But, yes, I don't have any problem with when based on the
19 facts of the case, if it's warranted, then I don't have a
20 problem.

21 **MR. BICKS:** Ms. Jacobs, I would love to hear your
22 thoughts on that topic.

23 **PROSPECTIVE JUROR JACOBS:** I think that's what our
24 system is for, is to solve disputes between individuals and
25 companies and I think that's what the whom system is for.

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1 **MR. BICKS:** Thank you.

2 Mr. Wong, any attitudes on damages and things of that
3 nature?

4 **PROSPECTIVE JUROR WONG:** No. None. This seems like a
5 dispute between products, and I figure if the product justifies
6 itself in its own way, this trial is justified.

7 **MR. BICKS:** Thank you.

8 And, Mr. West, share with me your thoughts on damages.

9 **PROSPECTIVE JUROR WEST:** I don't really have any views
10 as far as the amounts, the damages that go, but I know you
11 asked earlier about the software thing. Software is something
12 I think that in general is something that you should be
13 compensated for. It shouldn't be free.

14 **MR. BICKS:** I didn't quite -- say it again.

15 **PROSPECTIVE JUROR WEST:** The only thing I can think of
16 is that I do think software should be compensated for. The
17 free source thing that you were talking about earlier, that's
18 the only thing that I would have an opposing view on.

19 **MR. BICKS:** Yeah. Understood.

20 And, Ms. Shattuck, tell me your thoughts. You heard that.

21 **PROSPECTIVE JUROR SHATTUCK:** I really don't have any.

22 **MR. BICKS:** Thank you.

23 Ms. Rocha, your views.

24 **PROSPECTIVE JUROR ROCHA:** Well, I figured big
25 companies, big money. It goes together.

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1 **MR. BICKS:** Mr. Stromsness, are your thoughts?

2 **PROSPECTIVE JUROR STROMSNESS:** Yeah. I mean, the
3 amount didn't surprise me. Most of the tech suits seem to be
4 for billions of dollars these days. Yeah, I'm not sure what
5 the law is but, you know, nothing surprises me or seems wrong
6 to me.

7 **MR. BICKS:** Ms. Harper, could you share with us your
8 thoughts.

9 **PROSPECTIVE JUROR HARPER:** Well, initially when you
10 hear billions, that seems like a lot, but the size of the
11 companies, I recognize that we're talking about billions isn't
12 the same to a company like Google or Oracle as it is to my
13 personal checking account.

14 I have no opinion either way on damages.

15 **MR. BICKS:** Thank you.

16 Mr. Roberds.

17 **PROSPECTIVE JUROR ROBERDS:** I pretty much don't have
18 an opinion either. Big company, big money.

19 **MR. BICKS:** Thank you.

20 Ms. Brown.

21 **PROSPECTIVE JUROR BROWN:** This is my first time to
22 hear billions of dollars, but I have no opinion regarding whose
23 ever stand for their rights.

24 **MR. BICKS:** Yes.

25 **PROSPECTIVE JUROR BROWN:** No comments. That's it.

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1 **MR. BICKS:** Thank you.

2 Mr. Bruesewitz, your --

3 **PROSPECTIVE JUROR BRUESEWITZ:** I'm fine with damages.
4 However, to me there should be some proof of how you get to
5 that dollar figure. The million dollars for the woman who
6 burnt her tongue on hot coffee --

7 **MR. BICKS:** McDonald's.

8 **PROSPECTIVE JUROR BRUESEWITZ:** Yeah. So damages is
9 fine, but to me it's got to be something you can actually prove
10 some type of dollar amount for.

11 **MR. BICKS:** Ms. Settles.

12 **PROSPECTIVE JUROR SETTLES:** When I first heard the
13 number, it kind of jolted me a little bit, but Oracle and
14 Google, like you said, large companies, and I don't know how
15 the damages are -- how they're brought into court, how it's
16 agreed upon. So . . .

17 **MR. BICKS:** Mr. West, your point on, I think, the
18 software, as I understood, you were saying you thought it
19 should be paid for?

20 **PROSPECTIVE JUROR WEST:** Yeah. Basically I'm
21 saying --

22 **THE COURT:** You have to speak clearly and into the
23 microphone. I can't hear you.

24 **MR. BICKS:** I'm having a problem.

25 **THE COURT:** Say it again.

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1 **PROSPECTIVE JUROR WEST:** Yeah. Basically I just am
2 not exactly -- I wouldn't -- I don't know how to put it. I
3 don't believe in the free source -- the concept of it.

4 **MR. BICKS:** Yeah.

5 **PROSPECTIVE JUROR WEST:** But --

6 **THE COURT:** You do or you don't believe?

7 **PROSPECTIVE JUROR WEST:** I don't believe.

8 **THE COURT:** You do not. Tell me if we got it right.
9 You do not believe in free software?

10 **PROSPECTIVE JUROR WEST:** No, sir.

11 **THE COURT:** Okay. Thank you.

12 **MR. BICKS:** Can I just -- can you explain why you say
13 that?

14 **PROSPECTIVE JUROR WEST:** I would say it's just the way
15 I was raised and brought up. I don't believe anything to be
16 free, especially if it was something that somebody came up with
17 out of their own -- something that came out of somebody's head
18 deserves to be compensated for.

19 **MR. BICKS:** So in hearing the discussion that we've
20 been having, does anyone say to themselves, you know, that this
21 is a case you think that, you know, may not be the right case?
22 Anyone hearing the discussion and the topics saying to
23 themselves, you know, *this doesn't feel like the right kind of*
24 *case for me?* Anyone feeling that in any way? Yes.
25 Ms. Shattuck?

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1 **PROSPECTIVE JUROR SHATTUCK:** Well, I do just to the
2 extent that I'm concerned that I may not understand all the
3 discussion in the courtroom.

4 **MR. BICKS:** What kind of is on your mind on that
5 topic? Is there something that you're hearing and you're
6 saying that kind of unsettles you a little bit?

7 **PROSPECTIVE JUROR SHATTUCK:** I have failed to
8 understand a lot about computers for a pretty long time, so I'm
9 used to it, but it, you know -- I don't -- you know, you just
10 don't feel comfortable when you don't understand what's going
11 on. I think it's that simple.

12 **MR. BICKS:** And, Ms. Brown, did you -- I
13 couldn't . . .

14 **PROSPECTIVE JUROR BROWN:** I have little knowledge
15 about computers. But most of it I don't understand. And I
16 don't understand much about the Oracle or Google. And I
17 believe this is not the right case for me, although I
18 understand some of the English conversation that we have here.
19 But I don't know what it is really all about.

20 **MR. BICKS:** Thank you.

21 Let me say it kind of the other way, which is anyone
22 listening to this discussion and saying *Wow, I really want to*
23 *be on this case? This sounds like an exciting case and I'd*
24 *like to be on it?*

25 Why?

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1 **PROSPECTIVE JUROR HALEY:** I think it's fascinating. It
2 sounds --

3 **THE COURT:** You need to use the microphone, please.

4 **PROSPECTIVE JUROR HALEY:** I just think it's -- it's
5 fascinating to see, you know, two very innovative companies
6 sort of battle it out and fight over some of the things which,
7 you know, you see happening in this Silicon Valley all the
8 time.

9 And to be honest, I've also been on the patent side. I've
10 seen some of these things go, although I wasn't quite nearly as
11 close as I am here.

12 **MR. BICKS:** Yes.

13 Mr. Kotlar, your thoughts.

14 **PROSPECTIVE JUROR KOTLAR:** Yes. It seems like an
15 interesting case. The only thing I'd have to fight hard to is
16 not to bust anything out to my wife. That would be hard to
17 hold for five weeks, but I will do my best.

18 **MR. BICKS:** I'm sorry. Say it again.

19 **PROSPECTIVE JUROR KOTLAR:** You know. To not -- not to
20 inadvertently say something to my wife that I, you know -- when
21 you're married, you know, it's hard to not say anything, but,
22 you know, I'll do my best.

23 **THE COURT:** You can say that you're on the case.
24 That's it.

25 **PROSPECTIVE JUROR KOTLAR:** My wife is more tech savvy

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1 than me.

2 **THE COURT:** No pillow talk about the case. All right.

3 Now, somebody else raised their hand down here.

4 Ms. Rocha.

5 You're down to five minutes to go.

6 **MR. BICKS:** Thank you, Your Honor.

7 **THE COURT:** She raised her hand about wanting to be on
8 the case.

9 **MR. BICKS:** Yes.

10 **PROSPECTIVE JUROR ROCHA:** Well, I didn't know what it
11 was going to be about until I got here, and it sounded very
12 intriguing and it sounded like I could learn a lot from it.

13 **MR. BICKS:** And what --

14 **PROSPECTIVE JUROR ROCHA:** Interesting.

15 **MR. BICKS:** When you say you think you might learn a
16 lot --

17 **PROSPECTIVE JUROR ROCHA:** You know, in faces, new
18 people, new opportunity.

19 **MR. BICKS:** Thank you.

20 Anyone else have any kind of thinking *wow, this would be a*
21 *good case to be on?*

22 **THE COURT:** Ms. Hines is raising her hand.

23 **PROSPECTIVE JUROR HINES:** Same kind of response. Just
24 really interesting subject matter. Something way outside of
25 the field that I typically work on. And obviously we all know

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1 Oracle and Google, so kind of to hear more about what the
2 actual company does and specifically a topic like this would
3 just be a really interesting thing to be a part of.

4 **MR. BICKS:** So one of our former jurors mentioned
5 something involved PeopleSoft. Anyone, in hearing that, think
6 that's -- kind of at least give a negative feeling about Oracle
7 based on that comment that was made by one of our former jurors
8 here? Anyone hear that and say, *you know, that makes me lean*
9 *for or against Oracle?*

10 So this will be the last time, you know, that I will be
11 able to ask any of you questions. So my final wrap-up is
12 anything that if you were sitting over there and standing where
13 I am with my colleagues here and representatives from Oracle
14 that you think we should know that might be important in
15 indicating you may have -- this may not be the right case or
16 you may have kind of a leaning against Oracle? Anything that I
17 haven't covered with you on that? It's kind of now or, as they
18 say, forever hold your peace. Anything that comes up that
19 people think that we should share and talk about?

20 Final thing. I said that was the final, but lawyers are
21 never -- many of you indicated that you've got Android
22 products. Any concerns when you hear about what's at stake
23 here that, as the judge mentioned -- as people who have Android
24 products, is it on anybody's mind that that might impact
25 something that you like, you use, in a way that could be

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1 something that would be of concern to the Oracle side? Anyone?
2 Okay.

3 So thank you for your time.

4 And, Your Honor, thank you for the chance to do this.

5 **THE COURT:** All right. Thank you, Mr. Bicks.

6 We will take a break in a moment, but before we do it, on
7 the first day -- this is the first day -- we will not finish by
8 1:00 today. I had said earlier we will finish by 1:00. That's
9 once we get going with the evidence, but I'm pretty sure we're
10 not going to have the jury selected by 1:00 today, but maybe by
11 2:00 or 2:30 we will be done for today, would be my guess. I
12 might have misled you about the 1:00 thing. That doesn't apply
13 for today. So that's number one.

14 And number two, way back at the first of Mr. Bicks'
15 questions, he made -- it was a little unclear the difference
16 between Orrick and Oracle. So let's be very clear about it.
17 The law firm is the Orrick -- say the full name of the law
18 firm.

19 **MR. BICKS:** Oracle, Herrington & Sutcliffe.

20 **THE COURT:** Any of you ever heard of that law firm or
21 done business with that law firm? Okay. Good.

22 How about -- and then Oracle, of course you know that
23 we -- if you have any connection to the Oracle, we need to know
24 about it. Do any of you own stock in the company? Yes?

25 **PROSPECTIVE JUROR JACOBS:** I think we own stock in both

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1 companies, actually, in our portfolio. But my husband manages
2 it so I'm not even sure.

3 **THE COURT:** That could be a problem. I mean, here you
4 would be sitting on a jury where the value of your own
5 portfolio could go up or down, depending on how your verdict
6 was. Can you find out during the break whether you own stock
7 in either of these companies?

8 **PROSPECTIVE JUROR HALEY:** sure.

9 **THE COURT:** All right. Anyone else? Anyone else own
10 stock in one of these companies? Okay. Let's go to
11 Mr. Stromsness.

12 **PROSPECTIVE JUROR STROMSNESS:** Just index funds so --

13 **THE COURT:** Those don't count, I don't think. You
14 could tell us about it, but I'm talking about direct ownership.

15 **PROSPECTIVE JUROR HARPER:** My husband may or may not
16 own stock.

17 **THE COURT:** Can you find out during the break?

18 **PROSPECTIVE JUROR HARPER:** Sure.

19 **THE COURT:** Anyone else? And here is another thing.
20 It should go without saying, but you've got to appreciate this.
21 No one who is on the jury can trade in these two companies'
22 stock while the case is under way. That would be called
23 *insider trading*. And there are big penalties under the Title
24 18 of the United States Code for that. No insider -- I know
25 you wouldn't do it, but it's my duty to tell you.

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1 If you were to buy or sell the stock in one of these two
2 companies while the case was pending, it would be such a mess.
3 We can't -- so you know you just can't do that. Do you
4 understand that part? You got it? Okay. Good.

5 While we're on the break, I want -- we're going to come
6 back and hear from the Google lawyer and ask you some
7 questions, too.

8 I want you to be thinking about is there anything by way
9 of full disclosure you should bring up and let us know about.
10 I will just give you what sometimes happens. After the case is
11 over and somebody loses, because somebody is going to lose in
12 this case; right? Somebody is going to win. Once the case is
13 over -- not this case, but I've had it in other cases. It
14 might happen in this case. Whoever loses -- whoever wins is
15 happy. They don't look at -- but whoever loses finds out maybe
16 that a member of the jury failed to disclose something. So
17 they then bring a motion saying, *Judge, you got to set aside*
18 *that verdict because juror number X did not tell us that they*
19 *had something going* or whatever it is. *And if we had known*
20 *that, we would have challenged that juror.*

21 So it's impossible for us, no matter how good the lawyers
22 are, how much I ask -- it's impossible for me to get in
23 everything. So you need to be thinking is there anything you
24 think, just out of caution, you ought to disclose to us so that
25 we can let the lawyers take that into account. And they've got

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1 to go from 16 of you down to 10. So they will stand up in due
2 course and -- each side gets three. So they will exercise
3 their challenges based upon what you've told them. And so they
4 need to know if there is anything more there. Be thinking
5 about it, would you, please. I would appreciate it.

6 All right. We are going to take another break for 15
7 minutes. Please remember the admonition. Don't talk about the
8 case. But those of you who are supposed to call your spouses
9 and find out about stocks, you've got to do that, please.

10 Thank you.

11 **PROSPECTIVE JUROR HOSSEINIAN:** I have a question.
12 Having stock in either company automatically excuse us?

13 **THE COURT:** What?

14 **PROSPECTIVE JUROR HOSSEINIAN:** Having stock in either
15 company --

16 **THE COURT:** You do?

17 **PROSPECTIVE JUROR HOSSEINIAN:** I do have in Google.

18 **THE COURT:** Hang on a minute. Stay here.

19 Have all prospective members of the jury left now except
20 for you?

21 Okay. Anyone else who is a prospective member of the
22 jury, please raise your hand. Okay. You're leaving. Anyone
23 else? All right. Everyone else be seated.

24 And your name, sir?

25 **PROSPECTIVE JUROR HOSSEINIAN:** Hamid Hosseinian.

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1 **THE COURT:** Say again, please.

2 **PROSPECTIVE JUROR HOSSEINIAN:** H-A-M-I-D.

3 H-O-S-S-E-I-N-I-A-N.

4 **THE COURT:** You're telling us that you own stock in
5 one of these companies?

6 **PROSPECTIVE JUROR HOSSEINIAN:** I bought four Google
7 stock long time ago. They split. Now it is eight, and I'm
8 not -- I have left it for the retirement.

9 **THE COURT:** But you own it now?

10 **PROSPECTIVE JUROR HOSSEINIAN:** I own it.

11 **THE COURT:** Common stock in Google?

12 **PROSPECTIVE JUROR HOSSEINIAN:** Common stock of the
13 Google.

14 **THE COURT:** Anyone want to ask him any questions?

15 **MR. VAN NEST:** No, Your Honor.

16 **MR. BICKS:** No.

17 **THE COURT:** All right. You go take your 15-minute
18 break, and I will give you the answer when we come back. All
19 right?

20 **PROSPECTIVE JUROR HOSSEINIAN:** Okay. Thank you.

21 **THE COURT:** I need one of my law clerks to right that
22 name down. Okay.

23 I want to make sure, is there anyone else in the courtroom
24 who is a prospective juror? No one. All right. Okay.

25 So can we all agree that he should be excused?

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1 **MR. BICKS:** Yes.

2 **MR. VAN NEST:** Yes, Your Honor.

3 **THE COURT:** All right. Thank.

4 Now, what do you want to do -- any suggestions on excusing
5 anybody?

6 **MR. VAN NEST:** I do, Your Honor.

7 **THE COURT:** Please. Let's hear it.

8 **MR. VAN NEST:** I think Mr. West has said he just
9 doesn't believe in free software. It should always be paid
10 for. We're going to have a ton of testimony about open source
11 and obviously --

12 **THE COURT:** I'm not going to do it yet. You're going
13 to have to -- that's not -- the record is not good enough,
14 unless you want to stipulate. All right. I'm not going to --
15 you could ask him questions. Maybe it will come out that there
16 is a good enough record, but so far it's not good enough.

17 Anyone else?

18 **MR. VAN NEST:** I have concern about Ms. Shattuck, who
19 said several times she can't really follow what's going on with
20 computers and doesn't understand it, and we're going to have a
21 long trial with a lot of detail.

22 **THE COURT:** All right. I have that same concern and
23 also that same concern about Mrs. Brown.

24 **MR. VAN NEST:** And me as well.

25 **THE COURT:** My suggestion to both of you is you excuse

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1 both of them. I'm not going to do it unless you both agree.

2 **MR. VAN NEST:** We would agree.

3 **MR. BICKS:** Is that something, Your Honor, I could
4 speak with my folks about?

5 **THE COURT:** Of course. You can speak with them. My
6 experience in these cases has been that the people who know the
7 most on the jury and the best able to serve you will knock them
8 off. I promise you, that's what going to happen.

9 And all you members of the public out there, watch to see
10 that the people who get knocked off the jury are the ones who
11 could understand the best.

12 But so, Mr. Bicks, if you want to keep these two on the
13 jury, go ahead. But at least I'm not going to knock them off
14 without -- there is not cause yet to knock them off, but you go
15 ahead. Here, I will sit right here until you make your mind
16 up.

17 **MR. BICKS:** Really what's going through my mind,
18 Your Honor, is Ms. Shattuck, for example, a lot of people can
19 get intimidated hearing about this, but as I was speaking with
20 her, she is clearly very capable --

21 **THE COURT:** You don't have to -- look, I'm not going
22 to argue with you. You two decide what you want to do.

23 (Plaintiff's counsel confer off the record.)

24 **MR. BICKS:** So my thinking, Your Honor, would be with
25 Ms. Brown, you know, we would stipulate to that, but maybe we

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1 hear a little bit more on Ms. Shattuck.

2 **THE COURT:** All right. We will excuse Ms. Brown so
3 I'm not going to rule Ms. Shattuck out. There is not cause to
4 rule her out, but to my mind, it's pretty clear she is not
5 going to understand the evidence and -- but that's not grounds
6 to knock somebody off, at least on this record.

7 So we'll excuse Ms. Brown. And I said, I was not going to
8 excuse Mr. West yet. All right.

9 Anybody you want to have a discussion about?

10 **MR. BICKS:** I think I just should raise something that
11 was brought to my attention about Mr. Kotlar.

12 **THE COURT:** Yes?

13 **MR. BICKS:** And I don't know if this is accurate.
14 Someone suggested to me he was handing something to one of the
15 jurors who had been dismissed out in the hallway. I don't know
16 anything more than that.

17 **THE COURT:** What? Somebody told you that he did that?

18 **MR. BICKS:** Yeah.

19 **THE COURT:** What was he handing?

20 **MR. BICKS:** I don't know, Your Honor. Pamphlet or
21 something. I don't know. Just because it was reported to me I
22 thought I would relay it.

23 **THE COURT:** It might be one of these biblical things.
24 Who knows? He seems like he is a very religious guy.

25 Do you want me to ask him if he did that?

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1 **MR. BICKS:** Can I chat about that, Judge? I think we
2 probably should.

3 **THE COURT:** No. I'm happy to ask. So somebody who
4 was dismissed?

5 **MR. BICKS:** Yes.

6 **THE COURT:** Okay. By the way, the two people who
7 asked that I -- that I sent to the back of the room, you're
8 free to look at these as well.

9 Angie, would you hand these to counsel.

10 You can verify that I did it the right way.

11 **MR. BICKS:** Thank you.

12 **THE COURT:** Why don't you do that right now.

13 **MR. VAN NEST:** Your Honor, could I raise one other
14 point?

15 **THE COURT:** You can. But look at these two. Look at
16 it and see Question 9. They were not excused. They were just
17 sent to the back of the room. Okay. Are we good?

18 **MR. VAN NEST:** I'm sorry. Is the question whether --

19 **THE COURT:** The question is did I do it right?

20 **MR. BICKS:** Yes.

21 **MR. VAN NEST:** Yes, you did it right.

22 **THE COURT:** Then just hand them back. All right.
23 Good.

24 Now, what else did you want to raise?

25 **MR. VAN NEST:** I want to raise -- and Ms. Harper has

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1 on her -- Juror No. 9, she -- her brother is working at Oracle.
2 She answered yes actually to the question, "Have you or a loved
3 one within the past ten years been employed by" --

4 **THE COURT:** Yes.

5 **MR. VAN NEST:** -- "owned stock." Her brother works at
6 Oracle. I think it sounded like, from what she said, he has
7 worked there twice. Maybe once and come back. She says her
8 husband may own stock in Google. She is going to check on
9 that. I would think if she has any sort of relationship with
10 her brother and he is working at Oracle and programming, that
11 would be a reason to excuse --

12 **THE COURT:** Not necessarily. She said flat out it
13 would not influence her. I had invited you two to stipulate to
14 automatic exclusion for answers like that and you wouldn't do
15 it. You said you had to get more details.

16 **MR. VAN NEST:** We didn't say that. I was willing to
17 stipulate to that and thought we should, actually, on it.

18 **THE COURT:** Well, I'm not going to excuse her based on
19 the fact that her brother works at one of the companies. I
20 think she was asked -- now, you can follow up and ask her
21 questions and find out if she would be biased and maybe she is
22 going to turn out to own stock anyway. That would be a
23 deal-killer right there.

24 **MR. VAN NEST:** Right. Okay. Thank you, Your Honor.

25 **THE COURT:** But, yeah -- all right. Anything else?

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1 **MR. BICKS:** No, Your Honor.

2 **THE COURT:** We'll take about a ten-minute break.

3 Thank you.

4 (Recess taken at 12:04 p.m.)

5 (Proceedings resumed at 12:15 p.m.)

6 **THE COURT:** All right. Be seated, please.

7 Mr. Hamid, Hosseinian, where are you?

8 **PROSPECTIVE JUROR HOSSEINIAN:** Here.

9 **THE COURT:** Yes. We've agreed to excuse you. So go
10 back to the jury assembly room and tell them what happened,
11 okay.

12 **PROSPECTIVE JUROR HOSSEINIAN:** Okay.

13 **THE COURT:** Would you give us your questionnaire
14 though.

15 **PROSPECTIVE JUROR HOSSEINIAN:** Thank you.

16 **THE COURT:** You're most welcome.

17 Let's follow up. Ms. Harper, did you get any info?

18 **PROSPECTIVE JUROR HARPER:** I was not able to reach my
19 spouse. I left a message.

20 **THE COURT:** Well, the thing is, we can't have somebody
21 on the jury who owns stock in the company. Or their spouse
22 does.

23 **PROSPECTIVE JUROR HARPER:** I understand.

24 **THE COURT:** Or, for that matter, if you have a
25 partner, same thing.

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1 We've got to have people in here who have no source of
2 bias, okay. So you've got to find out the answer.

3 What makes you think that your husband might own stock?

4 **PROSPECTIVE JUROR HARPER:** Well, he has a small stock
5 account separate from mine. So he's constantly buying and
6 selling. So I did put it on my questionnaire that he might own
7 stock in Google initially. And I'm just not sure if he still
8 holds stock in Google or in Oracle.

9 **THE COURT:** One thing you've got to tell your spouses
10 and partners while the case is going on, no buying and selling
11 stock in either of these two companies. That much you have to
12 tell them.

13 Who else was going to check?

14 Ms. Jacobs.

15 **PROSPECTIVE JUROR JACOBS:** We had Google. And it was
16 sold last year. My husband owns ten shares, worth \$417, of
17 Oracle in his IRA.

18 **THE COURT:** Right now?

19 **PROSPECTIVE JUROR JACOBS:** Yes.

20 **THE COURT:** Don't we have to excuse Ms. Jacobs?
21 Agreed?

22 **PROSPECTIVE JUROR JACOBS:** It's a small percentage of
23 his portfolio.

24 **THE COURT:** Listen -- yes, Mr. Bicks.

25 **MR. BICKS:** This is an individual stock? Or, like, an

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1 index or --

2 **THE COURT:** It's stock directly in Oracle, but it's
3 owned in his retirement account.

4 **PROSPECTIVE JUROR JACOBS:** Correct.

5 **THE COURT:** So it's not an index fund. It's direct
6 ownership. Agreed?

7 **MR. BICKS:** Yes.

8 **THE COURT:** Okay. You would be a great juror,
9 Ms. Jacobs, but we've got to do it. We can't let you serve.

10 All right. I'm sorry. I should have brought this up
11 sooner.

12 Okay. Let's call a name to replace Ms. Jacobs.

13 **THE CLERK:** Jennifer Yasumoto, Y-a-s-u-m-o-t-o.

14 **THE COURT:** Yasumoto. All right. Please let me see
15 your questionnaire.

16 Great. Please have that seat over there. While you're
17 doing that...

18 Mr. Kotlar, can I ask you a question?

19 **PROSPECTIVE JUROR KOTLAR:** Yes, sir.

20 **THE COURT:** Someone -- I won't say who -- observed the
21 possibility that you gave some document to one of the jurors,
22 potential jurors who were dismissed, out in the hallway.

23 Did they see the right thing, or is that mistaken?

24 **PROSPECTIVE JUROR KOTLAR:** Uhm -- oh, you mean the,
25 uhm, one of the jurors in the box here?

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1 **THE COURT:** Yes, sir.

2 **PROSPECTIVE JUROR KOTLAR:** Yes, sir.

3 **THE COURT:** What happened?

4 **PROSPECTIVE JUROR KOTLAR:** That's not mistaken.

5 **THE COURT:** What were you giving them?

6 **PROSPECTIVE JUROR KOTLAR:** I can give you a copy if
7 you wish.

8 **THE COURT:** What is it?

9 **PROSPECTIVE JUROR KOTLAR:** It's a pamphlet related to
10 my church, and has some verses from the Word of God on it.

11 **THE COURT:** All right.

12 **PROSPECTIVE JUROR KOTLAR:** And it seemed, like,
13 appropriate because she's possibly mourning the loss, and Jesus
14 is the hope that she needs.

15 **THE COURT:** All right. Now, let me tell you
16 something. That's grand. That's fine. But you can't be
17 proselytizing your religion among the jury. Do you understand
18 that?

19 **PROSPECTIVE JUROR KOTLAR:** I cannot say I will keep
20 that. I serve a higher authority than you are, sir.

21 **THE COURT:** Well --

22 **PROSPECTIVE JUROR KOTLAR:** And there is a judge that
23 is higher than you, that we have to come to.

24 **THE COURT:** I accept that. But so far he has not
25 communicated to me.

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1 (Laughter)

2 **PROSPECTIVE JUROR KOTLAR:** He has left his
3 communication for everybody to read. You just have to open it
4 up.

5 **THE COURT:** I'm going with what's been communicated to
6 me. And you can't be intimidating the rest of the members of
7 the jury with your religion.

8 **PROSPECTIVE JUROR KOTLAR:** I don't try to intimidate.
9 But I cannot keep what you say.

10 **THE COURT:** Fine. You sit there for a minute and I'll
11 take it up with the lawyers. We'll see if that's a problem,
12 okay.

13 **PROSPECTIVE JUROR KOTLAR:** Okay.

14 **THE COURT:** All right. What is your religion, anyway?

15 **PROSPECTIVE JUROR KOTLAR:** I am a born again
16 Christian. Jesus is my savior. I am a Baptist by church
17 authority. But Jesus is the only savior.

18 **THE COURT:** All right.

19 **PROSPECTIVE JUROR KOTLAR:** And that we have to claim.

20 **THE COURT:** I got it.

21 **PROSPECTIVE JUROR KOTLAR:** People trust in many
22 different kinds, but he's the only one.

23 **THE COURT:** Okay. I got it.

24 Thank you.

25 Now, Ms. -- I've got to change subjects. Ms. Brown.

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1 **PROSPECTIVE JUROR BROWN:** Yes.

2 **THE COURT:** Because of the reservations you expressed
3 about understanding the case, the lawyers want to excuse you.
4 Both agree. Both sides agree. So you're excused.

5 **PROSPECTIVE JUROR BROWN:** Thank you.

6 **THE COURT:** So you may go back to the jury assembly
7 room and tell them what happened.

8 **PROSPECTIVE JUROR BROWN:** Yes, sir.

9 **THE COURT:** And we will now replace Mrs. Brown.

10 **THE CLERK:** Okay. Victoria Davis. D-a-v-i-s.

11 **THE COURT:** Good morning, Ms. Davis. No, it's good
12 afternoon.

13 **PROSPECTIVE JUROR DAVIS:** Yes.

14 **THE COURT:** How are you today?

15 **PROSPECTIVE JUROR DAVIS:** Cool.

16 **THE COURT:** You're good. It's a little cold in here.
17 We have to keep it a little cold in here because there's so
18 many people, and you get sleepy if I don't keep it cold.

19 (Laughter)

20 **THE COURT:** So good for you. All right.

21 You get to sit in Mrs. Brown's spot. Thank you.

22 Okay. Can I see counsel at the sidebar for one moment.

23 (The following proceedings were heard at the sidebar:)

24 **THE COURT:** Okay. I believe we should excuse
25 Mr. Kotlar, but I don't want to do that without a stipulation.

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1 **MR. VAN NEST:** So stipulated.

2 **MR. BICKS:** Agreed.

3 **THE COURT:** So I'm going to excuse him right now.

4 Thank you.

5 **MR. VAN NEST:** Thank you.

6 (Sidebar concluded.)

7 **THE COURT:** Mr. Kotlar, based on your religious
8 beliefs that there's higher authority than I am -- which is
9 fine in some respects, but in this courtroom I've got to be the
10 highest authority.

11 **PROSPECTIVE JUROR KOTLAR:** I understand.

12 **THE COURT:** So you're excused. Please go back to the
13 jury assembly room and tell them what happened. All right.
14 Good luck to you, sir.

15 **PROSPECTIVE JUROR KOTLAR:** Before I leave, can I give
16 you a copy of that?

17 **THE COURT:** No. It would be wasted.

18 **PROSPECTIVE JUROR KOTLAR:** Yes, sir.

19 **THE COURT:** Thank you.

20 Next, let's replace Mr. Kotlar.

21 **THE CLERK:** Wendy Huynh. H-u-y-n-h.

22 **THE COURT:** H-u-y-n- --

23 **THE CLERK:** -- h.

24 **THE COURT:** -- h.

25 How do you say your last name?

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1 **PROSPECTIVE JUROR HUYNH:** Huynh.

2 **THE COURT:** Ms. Huynh, please take that empty seat.

3 All right.

4 Let's start with you, Ms. Davis. We've got two new
5 people. I have forgotten how many. Two new people. No,
6 three. We've got Ms. Yasumoto; right.

7 Pass the mic to Ms. Yasumoto first.

8 Ms. Yasumoto, do you have any hardship issue.

9 **PROSPECTIVE JUROR YASUMOTO:** No.

10 **THE COURT:** Can you see the chart?

11 **PROSPECTIVE JUROR YASUMOTO:** Yes.

12 **THE COURT:** Can give us the information.

13 **PROSPECTIVE JUROR YASUMOTO:** Jennifer Yasumoto.

14 El Cerrito.

15 Graduate school, law school.

16 Current job is Chief Deputy County Counsel in Napa County.
17 I'm not a member of any organizations or clubs.

18 **THE COURT:** A little closer to the microphone please.

19 **PROSPECTIVE JUROR YASUMOTO:** Hobbies, cooking, baking,
20 crafting, piano playing.

21 I am married. My spouse is a psychologist.

22 We have no children.

23 I did serve on a jury about three years ago. It was
24 civil. We reached a verdict. I was the foreperson. No
25 military or law enforcement.

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1 Never a party or witness in court.

2 **THE COURT:** So you're a lawyer?

3 **PROSPECTIVE JUROR YASUMOTO:** Correct.

4 **THE COURT:** Practicing?

5 **PROSPECTIVE JUROR YASUMOTO:** Correct.

6 **THE COURT:** And your client is the County of Napa
7 County?

8 **PROSPECTIVE JUROR YASUMOTO:** Correct.

9 **THE COURT:** Do you do litigation? What kind of work
10 do you do?

11 **PROSPECTIVE JUROR YASUMOTO:** I do employment. And I
12 represent most relative to human services agencies.

13 **THE COURT:** Is there anything about the work you do
14 that bears on the kind of case we've got here?

15 **PROSPECTIVE JUROR YASUMOTO:** I don't think so.

16 **THE COURT:** All right. Have you heard all of the
17 questions so far?

18 **PROSPECTIVE JUROR YASUMOTO:** Yes.

19 **THE COURT:** Would you have raised your hand to any of
20 those questions?

21 **PROSPECTIVE JUROR YASUMOTO:** No.

22 **THE COURT:** Can you be a fair and impartial juror?

23 **PROSPECTIVE JUROR YASUMOTO:** Yes.

24 **THE COURT:** Would you follow the instructions I give
25 you?

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1 **PROSPECTIVE JUROR YASUMOTO:** Yes.

2 **THE COURT:** Would you do that thing about laying the
3 evidence alongside the items of proof that have to be proven
4 and then do that fair and square?

5 **PROSPECTIVE JUROR YASUMOTO:** Yes.

6 **THE COURT:** All right. Great. Please pass the
7 microphone to Mrs. Davis.

8 Ms. Davis, do you have a hardship issue?

9 **PROSPECTIVE JUROR DAVIS:** No.

10 **THE COURT:** Can you see the chart okay?

11 **PROSPECTIVE JUROR DAVIS:** (Nods head.)

12 **THE COURT:** Please give us the info.

13 **PROSPECTIVE JUROR DAVIS:** My name is Victoria Davis.
14 I live in Berkeley.

15 I have a bachelor's in English literature.

16 I'm retired. My most recent job was as a medical
17 transcriptionist and working in medical records.

18 I belong to the Stewards of the Coast and Redwoods.

19 My hobbies is reading, and more reading, walking,
20 bicycling.

21 I'm divorced, but I've been living with a partner for 10,
22 12 years.

23 I have one living child. I had a daughter die a couple of
24 years ago. He's 29. He is a production engineer, I think in,
25 a netcasting, podcasting, netcasting, something like that.

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1 TWIT. It's called TWIT. This Week in Technology. That's all
2 I know.

3 I have had prior -- I've had four prior jury services, but
4 two of them were several -- many, many years ago in another
5 state.

6 Two in California. One was criminal. One was civil. The
7 criminal was 15 or more years ago in Sonoma County. And we
8 reached a verdict. And the civil was just three or four years
9 ago in Oakland. And we reached a verdict. Although, that one
10 was difficult. That took us a long time.

11 No military, law enforcement.

12 And I've never been a party or a witness in court.

13 **THE COURT:** Did you hear all the questions that were
14 asked earlier?

15 **PROSPECTIVE JUROR DAVIS:** No problem.

16 **THE COURT:** The questions I asked and the questions
17 that Mr. Bicks asked, would you have raised your hand to any of
18 those?

19 **PROSPECTIVE JUROR DAVIS:** No.

20 **THE COURT:** Let me ask, how about this, do you have an
21 Android telephone?

22 **PROSPECTIVE JUROR DAVIS:** No. I've had iPhones all
23 along.

24 **THE COURT:** iPhones, okay. All right. Do you own
25 stock in either of these two companies? Or your partner?

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1 **PROSPECTIVE JUROR DAVIS:** No.

2 **THE COURT:** I forgot, Ms. Yasumoto, do you or your
3 husband own any stock in one of these companies?

4 **PROSPECTIVE JUROR YASUMOTO:** No.

5 **PROSPECTIVE JUROR DAVIS:** I mean, I don't. And I'm --
6 I think that my partner's stock is -- is all in biotech. He's
7 got -- I tried to call him, but he's playing golf. So I can't
8 possibly reach him. But he changed everything to mutual funds
9 and biotech, as far as I know. He keeps pretty up with me on
10 what he's got.

11 And I know that he's not at all interested in -- in
12 technology. I've never heard him ever talk about how Google is
13 going, or Oracle. So he would talk about it because he talks
14 about everything else.

15 (Laughter)

16 **THE COURT:** Okay. So.

17 **PROSPECTIVE JUROR DAVIS:** I can't say for a hundred
18 percent sure, but I think I would know because I know how all
19 the other stocks are doing.

20 **THE COURT:** Okay. All right. Let's please pass the
21 mic to Ms. Huynh.

22 Ms. Huynh, do you have any hardship issue?

23 **PROSPECTIVE JUROR HUYNH:** No.

24 **THE COURT:** You can you see the poster.

25 **PROSPECTIVE JUROR HUYNH:** Yes.

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1 **THE COURT:** Please give us the info.

2 **PROSPECTIVE JUROR HUYNH:** My name is Wendy Huynh. I
3 live in Hercules.

4 I have a bachelor of science in biological sciences from
5 UC Davis.

6 I currently work at Biomarin Pharmaceutical in Novato.

7 I'm not affiliated with any organizations.

8 Hobbies are running, reading. I am not married, but I am
9 engaged.

10 Uhm, my fiance works as a technical specialist at Biomarin
11 also.

12 I don't have any children.

13 No prior jury service.

14 Never been in the military.

15 Or have never been a witness in court.

16 **THE COURT:** Okay. Do you have an Android phone?

17 **PROSPECTIVE JUROR HUYNH:** I have an iPhone.

18 **THE COURT:** Have you ever had one in the past?

19 **PROSPECTIVE JUROR HUYNH:** No.

20 **THE COURT:** Do you think you're biased slightly one
21 way or the other in this case?

22 **PROSPECTIVE JUROR HUYNH:** No.

23 **THE COURT:** Can you be fair and impartial to both
24 sides?

25 **PROSPECTIVE JUROR HUYNH:** Yes.

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1 **THE COURT:** Will you?

2 **PROSPECTIVE JUROR HUYNH:** Yes.

3 **THE COURT:** And will you follow my instructions as to
4 the law?

5 **PROSPECTIVE JUROR HUYNH:** Yes.

6 **THE COURT:** All right. Thank you.

7 Anyone, before we continue with the next lawyer, did you
8 think of anything that you want to disclose?

9 Okay. Ms. Harper. Let's take the microphone back to
10 Ms. Harper.

11 **PROSPECTIVE JUROR HARPER:** With no disrespect
12 intended, Your Honor, I did leave my phone on so I could
13 receive a text regarding the stock.

14 **THE COURT:** Yeah.

15 **PROSPECTIVE JUROR HARPER:** And my husband says he has
16 holdings in a mutual fund that holds Google, but that's all.

17 **THE COURT:** All right. Counsel, I don't think that's
18 a problem. But do any of you think it's a problem?

19 **MR. VAN NEST:** No, Your Honor. It's a mutual fund.

20 **MR. BICKS:** My question would just be would it have an
21 impact?

22 **THE COURT:** Here, why don't you ask a few questions.
23 I'll give you a little extra time. Go ahead, ask the
24 questions.

25 **MR. BICKS:** Any -- appreciate --

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1 **PROSPECTIVE JUROR HARPER:** It has no impact for me.

2 **MR. BICKS:** Because people -- if you have a mutual
3 fund, people think -- you know, that can be concerned about
4 that. But from your perspective you're okay?

5 **PROSPECTIVE JUROR HARPER:** Yes.

6 **MR. BICKS:** Thank you.

7 **THE COURT:** So you've got a brother that works for one
8 side; right?

9 (Laughter)

10 **THE COURT:** And you've got a husband that owns a
11 mutual fund that has stock in Google; right?

12 **PROSPECTIVE JUROR HARPER:** Correct.

13 **THE COURT:** But none of that is going to matter to
14 you; correct?

15 **PROSPECTIVE JUROR HARPER:** No.

16 **THE COURT:** Wait. See, I had a bad question. Will it
17 matter to you?

18 **PROSPECTIVE JUROR HARPER:** No.

19 **THE COURT:** All right. That's what I meant to ask.
20 All right. Great.

21 Anyone else have a full disclosure point? Ms. Rocha, we
22 need to get you the microphone.

23 **PROSPECTIVE JUROR ROCHA:** When you mentioned
24 PeopleSoft, I did work for PeopleSoft, through a temp agency,
25 for two months about 20 years ago.

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1 **THE COURT:** That was before Oracle was on the scene;
2 correct?

3 **PROSPECTIVE JUROR ROCHA:** Yes, yes.

4 **THE COURT:** Will that have anything to do with how
5 good a juror you are?

6 **PROSPECTIVE JUROR ROCHA:** No.

7 **THE COURT:** All right. Thank you.

8 Anyone else? That's a good point to bring up though.
9 That's exactly the kind of point that should be disclosed.

10 Anyone else? Great.

11 So I'm going to -- Mr. Bicks, we've got three new people
12 on the panel. So I'm going to give you extra time, but not
13 yet.

14 Let's let Mr. Van Nest ask his questions, and then we'll
15 come back to you and give you some more time.

16 **MR. VAN NEST:** Thank you. Thank you, Your Honor.

17 Good afternoon everyone. My name is Bob Van Nest. I'm at
18 Keker & Van Nest, here in San Francisco, and very proud to be
19 here representing Google.

20 I'd like to reintroduce my team as well, Your Honor.

21 **THE COURT:** Do so.

22 **MR. VAN NEST:** Our client representative from Google
23 is Catherine Lacavera.

24 And with me Christa Anderson, Dan Purcell, Matthias
25 Kamber, Michael Kwun, Mike Tiktinsky. And that's our team.

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1 Do any of you know any of those folks, me, or anyone else?

2 Very good. Thank you.

3 And I want to start by thanking you for your service as
4 jurors. As you've heard a couple of times, it's a very
5 important case for both parties. And I really appreciate the
6 candor you've shown on the questionnaires and in the answers.

7 And I'm going to keep at it for a little while. Thank
8 you.

9 Ms. Kreslake.

10 **PROSPECTIVE JUROR KRESLAKE:** Yes.

11 **MR. VAN NEST:** Good afternoon.

12 You mentioned that you've got a neighbor and your best
13 friend that both work at Oracle.

14 **THE COURT:** Pass the mic down there, please.

15 **PROSPECTIVE JUROR KRESLAKE:** The nextdoor neighbor
16 currently works at Oracle. My closest friend, she no long
17 works with Oracle. And she's moved out of state.

18 **MR. VAN NEST:** How long ago did your closest friend
19 move away?

20 **PROSPECTIVE JUROR KRESLAKE:** She moved away a year
21 ago. And she departed Oracle, probably, 18 months ago.

22 **MR. VAN NEST:** Okay. Did you and she talk together a
23 lot about Oracle or about her work? Was that a common source
24 of discussion?

25 **PROSPECTIVE JUROR KRESLAKE:** Yes, because she worked

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1 at several places. And, yes, she would talk about her work
2 with me.

3 **MR. VAN NEST:** How often would the two of you talk?

4 **PROSPECTIVE JUROR KRESLAKE:** We saw each other once a
5 week.

6 **MR. VAN NEST:** What area of Oracle was she working in?

7 **PROSPECTIVE JUROR KRESLAKE:** She was in human
8 resources.

9 **MR. VAN NEST:** Here in Redwood Shores?

10 **PROSPECTIVE JUROR KRESLAKE:** Yes.

11 **MR. VAN NEST:** I take it she shared her views of
12 Oracle, and was happy to work there?

13 (Laughter)

14 **MR. VAN NEST:** Let me ask another question. Let's
15 talk about your neighbor.

16 **PROSPECTIVE JUROR KRESLAKE:** Yes.

17 **MR. VAN NEST:** The neighbor who works there at Oracle
18 now. How often do you talk with him or her?

19 **PROSPECTIVE JUROR KRESLAKE:** Quite a bit, but never
20 about his work, other than I know he's in cloud computing.

21 **MR. VAN NEST:** Okay.

22 **PROSPECTIVE JUROR KRESLAKE:** But he doesn't speak to
23 me about details of his work.

24 **MR. VAN NEST:** And he works here at Redwood Shores as
25 well?

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1 **PROSPECTIVE JUROR KRESLAKE:** Yes.

2 **MR. VAN NEST:** Your neighbor, are you close friends,
3 good friends, good neighbors?

4 **PROSPECTIVE JUROR KRESLAKE:** Good neighbors.

5 **MR. VAN NEST:** Good neighbors. But the two of you
6 haven't talked about work?

7 **PROSPECTIVE JUROR KRESLAKE:** No.

8 **MR. VAN NEST:** So, Ms. Kreslake, my question is, would
9 your relationship with either your best friend or your current
10 neighbor, does that have any -- will that cause you to put
11 Oracle a little bit ahead as we start this case where they're
12 the plaintiff suing Google?

13 **PROSPECTIVE JUROR KRESLAKE:** No, because we live in
14 San Carlos. All of our neighbors work for some tech firm.
15 Some Google, some -- you know, I'm not privy to everybody's
16 job. But I hear a lot of talk about tech companies because I'm
17 in that neighborhood. San Carlos is full of it.

18 But as far as my closest friend, I agreed with some of her
19 opinions. And I didn't agree with others. And, you know, I
20 mean, it was just -- no, I don't think it would bias me one way
21 or another.

22 **MR. VAN NEST:** Would it cause you to think more
23 favorably about Oracle vis-a-vis Google --

24 **PROSPECTIVE JUROR KRESLAKE:** No.

25 **MR. VAN NEST:** -- without having heard any evidence?

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1 **PROSPECTIVE JUROR KRESLAKE:** No, huh-uh.

2 **MR. VAN NEST:** Thank you, Ms. Kreslake.

3 One thing we didn't find out. Do you have a smartphone?

4 **PROSPECTIVE JUROR KRESLAKE:** I have an old-fashioned,
5 basic cell phone because we have a tablet.

6 **MR. VAN NEST:** And your tablet is?

7 **PROSPECTIVE JUROR KRESLAKE:** Samsung Galaxy.

8 **MR. VAN NEST:** Galaxy. So you have a Samsung Galaxy
9 tablet?

10 **PROSPECTIVE JUROR KRESLAKE:** Yes.

11 **PROSPECTIVE JUROR DAVIS:** Have you had any problems
12 with that?

13 **PROSPECTIVE JUROR KRESLAKE:** No.

14 **MR. VAN NEST:** Happy with it.

15 **PROSPECTIVE JUROR KRESLAKE:** Uh-huh.

16 **MR. VAN NEST:** Thank you very much.

17 **PROSPECTIVE JUROR KRESLAKE:** Okay.

18 **MR. VAN NEST:** Ms. Harper, good afternoon. I know
19 we've had a number of questions for you.

20 Your brother works at Oracle.

21 **PROSPECTIVE JUROR HARPER:** Yes.

22 **MR. VAN NEST:** Did he work there before as well?

23 **PROSPECTIVE JUROR HARPER:** My understanding is he's
24 worked there previously, yes.

25 **MR. VAN NEST:** And do you know how long he was an

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1 Oracle employee the first time?

2 **PROSPECTIVE JUROR HARPER:** I few years, I believe. It
3 gets a little murky. I don't understand everything that he
4 does. And sometimes he's worked independently and contracted
5 for some of the software companies. So --

6 **MR. VAN NEST:** Is he a programmer?

7 **PROSPECTIVE JUROR HARPER:** Yes.

8 **MR. VAN NEST:** And he's just now recently returned to
9 Oracle?

10 **PROSPECTIVE JUROR HARPER:** Correct.

11 **MR. VAN NEST:** Do you see your brother frequently?
12 Infrequently? How often do you two talk?

13 **PROSPECTIVE JUROR HARPER:** About three or four times a
14 year.

15 **MR. VAN NEST:** So not a lot?

16 **PROSPECTIVE JUROR MS. HARPER:** No.

17 **MR. VAN NEST:** Have you ever talked about work?

18 **PROSPECTIVE JUROR HARPER:** Like I said, I don't
19 understand everything he does. So a lot of it (indicating).

20 **MR. VAN NEST:** Very good.

21 And, again, the fact that he's now back at Oracle, would
22 that have any impact on your thinking about this case?

23 **PROSPECTIVE JUROR HARPER:** No.

24 **MR. VAN NEST:** Would it give Oracle an advantage even
25 before the first witness shows up?

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1 **PROSPECTIVE JUROR HARPER:** No.

2 **MR. VAN NEST:** And it's not something that you're
3 worried about in terms of your ability to be fair and
4 impartial?

5 **PROSPECTIVE JUROR HARPER:** No. I've not heard
6 anything about the case from him, or read anything in the news
7 or anything like that. So currently I have no opinion.

8 **MR. VAN NEST:** Thank you.

9 Ms. Shattuck, good afternoon.

10 You said a couple of times that you -- you have concerns
11 about computers because sometimes the language we're using is
12 confusing.

13 Can you elaborate on that just a little bit for us. Are
14 you worried about being able to understand testimony about
15 computers?

16 **PROSPECTIVE JUROR SHATTUCK:** Yes.

17 **MR. VAN NEST:** And why?

18 **PROSPECTIVE JUROR SHATTUCK:** Well, if you don't
19 understand the language, you're not going to understand what's
20 being talked about.

21 **MR. VAN NEST:** And when you -- do you have a computer
22 at home now?

23 **PROSPECTIVE JUROR SHATTUCK:** Yes, I do.

24 **MR. VAN NEST:** Do you have -- need help with that? Do
25 you ask your kids for help or your --

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1 **PROSPECTIVE JUROR SHATTUCK:** My son lives in Chicago,
2 but when he visits I always ask him for help.

3 **MR. VAN NEST:** And are you concerned that technical
4 testimony about computers or the computer business will be
5 difficult for you to follow?

6 **PROSPECTIVE JUROR SHATTUCK:** Yes.

7 **MR. VAN NEST:** Is this the kind of case, you think,
8 that's maybe not cut out for you? Would you rather sit on a
9 different case?

10 **PROSPECTIVE JUROR SHATTUCK:** Oh, what do you have in
11 mind?

12 (Laughter)

13 **MR. VAN NEST:** Well said. Well said.

14 (Laughter)

15 **MR. VAN NEST:** I wish I were in charge. That's not
16 the case. That's not the case.

17 **PROSPECTIVE JUROR SHATTUCK:** I don't -- you know, I
18 don't -- I don't have a feeling one way or the other --

19 **MR. VAN NEST:** Okay.

20 **PROSPECTIVE JUROR SHATTUCK:** -- about that.

21 **MR. VAN NEST:** Thank you. Thank you.

22 One other question I had for you. You mentioned that --
23 are you -- were you active in your union when you were working?

24 **PROSPECTIVE JUROR SHATTUCK:** Yes.

25 **MR. VAN NEST:** What positions did you hold?

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1 **PROSPECTIVE JUROR SHATTUCK:** I've been a shop steward
2 for many years. I was president of my local for many years. I
3 was a member of the statewide board for many years.

4 **MR. VAN NEST:** And were those positions that you were
5 appointed to or you were elected to?

6 **PROSPECTIVE JUROR SHATTUCK:** Elected.

7 **MR. VAN NEST:** Elected to. Congratulations.

8 **PROSPECTIVE JUROR SHATTUCK:** Thank you.

9 **MR. VAN NEST:** And I see you enjoyed that a lot.

10 **PROSPECTIVE JUROR SHATTUCK:** I did.

11 **MR. VAN NEST:** Are you retired from that now, as well?

12 **PROSPECTIVE JUROR SHATTUCK:** Yes.

13 **MR. VAN NEST:** Thank you. Thank you.

14 Let's go right next door to Mr. West.

15 Good afternoon, Mr. West.

16 **PROSPECTIVE JUROR WEST:** How's it going?

17 **MR. VAN NEST:** It's going well.

18 I want to ask you your views on software. Tell me, again,
19 I think you responded earlier that your view was that there's
20 no such thing as open source software, or all software should
21 be compensated.

22 **PROSPECTIVE JUROR WEST:** Yeah.

23 **MR. VAN NEST:** Tell us what you meant by that.

24 **PROSPECTIVE JUROR WEST:** Basically, what I mean is it
25 would go the same with any category, whether somebody has an

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1 idea, an invention, or even an efficient process that they come
2 up with on their own should always be compensated for.
3 Especially if it's something that -- that you have help with by
4 a bigger corporation. Something like that. You would
5 always -- it should always be compensated for. Nothing should
6 be really free for everybody to use.

7 **MR. VAN NEST:** And is that a view that you have based
8 on your work or based on school or both?

9 **PROSPECTIVE JUROR WEST:** A little bit of -- well,
10 mostly work. And then just the way I was brought up.

11 **MR. VAN NEST:** What is it about work that's caused you
12 to have those views?

13 **PROSPECTIVE JUROR WEST:** I'm just a tradesman in
14 general. And I tend to work pretty hard. And I prefer to be
15 well-compensated for the things that I do, especially if I come
16 up with something that's a more efficient way of doing things.
17 I would expect to be compensated for that.

18 **MR. VAN NEST:** Now, have you ever heard of software
19 called open source, that a bunch of companies work on together
20 and give away for free? Is that something you're familiar
21 with?

22 **PROSPECTIVE JUROR WEST:** Not exactly. I mean, I've
23 kind of heard of the open source concept, but not in detail.

24 **MR. VAN NEST:** Okay. There will be some evidence,
25 some testimony about open source software and software that was

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1 either free or not free. I take it you would come to that
2 with, sort of, a previous position as to whether software can
3 ever be free?

4 **PROSPECTIVE JUROR WEST:** Yeah.

5 **MR. VAN NEST:** And why do you think that?

6 **PROSPECTIVE JUROR WEST:** Uhm, can you rephrase that?

7 **MR. VAN NEST:** Let me put it this way: You have
8 strong views about paying for software. Would it be difficult
9 for you to put those views aside and listen to evidence about
10 open source software and free software?

11 **PROSPECTIVE JUROR WEST:** No.

12 **MR. VAN NEST:** Some of the evidence will go to the
13 issue of companies sharing software.

14 **PROSPECTIVE JUROR WEST:** Uh-huh.

15 **MR. VAN NEST:** Do you have any views about that?

16 **PROSPECTIVE JUROR WEST:** No.

17 **MR. VAN NEST:** No?

18 And do you think you could sit impartially in a situation
19 where one party was claiming that the software was free and the
20 other party was claiming that the software was only for sale?

21 **PROSPECTIVE JUROR WEST:** Yeah, absolutely.

22 **MR. VAN NEST:** All right. Thank you, Mr. West.

23 Ms. Huynh.

24 **THE COURT:** Just one second.

25 All right. Thank you. Go ahead.

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1 **MR. VAN NEST:** I'd like to ask Ms. -- Ms. Huynh, good
2 afternoon.

3 **PROSPECTIVE JUROR HUYNH:** Good afternoon.

4 **MR. VAN NEST:** You mentioned on your questionnaire
5 that your father may own stock in Oracle or Google. Do you
6 know that for a fact? Or that's something you think may be
7 true?

8 **PROSPECTIVE JUROR HUYNH:** I think may be true. I know
9 he talks a lot about stocks, mentions Google and Oracle. But I
10 am not sure.

11 **MR. VAN NEST:** And this is your father?

12 **PROSPECTIVE JUROR HUYNH:** Yes, my father.

13 **MR. VAN NEST:** Do you live with your parents now?

14 **PROSPECTIVE JUROR HUYNH:** Yes, I live with them.

15 **MR. VAN NEST:** Does your dad talk about stocks
16 frequently?

17 **PROSPECTIVE JUROR HUYNH:** He would just mention
18 because he would watch, you know, the stocks on TV, and just
19 mention, oh, stocks are going up or down. But I don't really
20 pay attention.

21 **MR. VAN NEST:** You don't follow it yourself?

22 **PROSPECTIVE JUROR HUYNH:** No.

23 **MR. VAN NEST:** This is something he talks about. And
24 this is his account, your parents' account, not your own
25 account?

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1 **PROSPECTIVE JUROR HUYNH:** Yeah, not my account.

2 **MR. VAN NEST:** Okay. Can you tell us a little bit
3 what you do at Biomarin? You mentioned quality control. What
4 are you doing day by day?

5 **PROSPECTIVE JUROR HUYNH:** So I work in the quality
6 control department in environmental monitoring group. And our
7 group pretty much monitors the environment, the rooms and the
8 water utility systems for the manufacturing facility at our
9 company. And I -- my job is really writing up deviations or
10 investigations on -- if we have any excursions over
11 specification limits, then I write up the investigations for
12 those. And just pretty much making sure that the lab runs
13 smoothly, because I work in the lab as well.

14 **MR. VAN NEST:** Thank you.

15 The reports you're doing there for the company's benefit?
16 You're reporting within the company --

17 **PROSPECTIVE JUROR HUYNH:** Yes.

18 **MR. VAN NEST:** -- on whether they are exceeding
19 specifications, and that sort of thing?

20 **PROSPECTIVE JUROR HUYNH:** Yes.

21 **MR. VAN NEST:** Do you have enforcement responsibility
22 in that regard? Or you're simply making a report and passing
23 it on?

24 **PROSPECTIVE JUROR HUYNH:** I'm just making the report.
25 There's always an approver. My boss approves my investigations

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1 before it's official.

2 **MR. VAN NEST:** And your background in school is in
3 pharmaceuticals?

4 **PROSPECTIVE JUROR HUYNH:** In biology.

5 **MR. VAN NEST:** In biology. Thank you. Thank you
6 Ms. Huynh.

7 Ms. Davis, one of our new arrivals.

8 Ms. Davis, you mentioned that you read a lot. Have you
9 written anything?

10 **PROSPECTIVE JUROR DAVIS:** Written?

11 **MR. VAN NEST:** Have you written anything?

12 **PROSPECTIVE JUROR DAVIS:** Written, no.

13 **MR. VAN NEST:** You're not an author; you're a reader?

14 **PROSPECTIVE JUROR DAVIS:** I'm a reader.

15 **MR. VAN NEST:** Do you think about -- this is a case
16 about copyright. Is copyright something that you think about a
17 lot, a little, or not much?

18 **PROSPECTIVE JUROR DAVIS:** Uhm, the only way -- place
19 I've been following it is with like eBooks.

20 **MR. VAN NEST:** And what have you been following on
21 eBooks?

22 **PROSPECTIVE JUROR DAVIS:** Well, not too much. I'm not
23 even clear how I feel about it, you know, eBooks versus real
24 books. I like real books.

25 **MR. VAN NEST:** You like to hold --

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1 **PROSPECTIVE JUROR DAVIS:** On the other hand, I have a
2 Kindle.

3 (Laughter)

4 **PROSPECTIVE JUROR DAVIS:** And that's not really a
5 copyright issue, I think. That's a whole different issue. So,
6 no, I don't -- I don't actually know too much about copyright.

7 **MR. VAN NEST:** Okay. And you mentioned you have
8 always had an iPhone, not an Android.

9 Do you have anything against an Android, or simply chose
10 an iPhone?

11 **PROSPECTIVE JUROR DAVIS:** No, I just had iPhone from
12 the beginning. I have a Mac. And, you know, I just sort of
13 drank the Kool-Aid, and I have the whole system. And it's just
14 easier to have everything all in one.

15 **MR. VAN NEST:** Perfect.

16 **PROSPECTIVE JUROR DAVIS:** Because Android didn't have
17 that in the beginning. You know, if you had -- if you had an
18 Android phone and a Mac computer, you couldn't put all your
19 photos.

20 **MR. VAN NEST:** That's gotten a lot better. But not
21 yet.

22 **PROSPECTIVE JUROR DAVIS:** I know. I've heard. My son
23 is a total Microsoft person, so --

24 **MR. VAN NEST:** So he's into Windows.

25 **PROSPECTIVE JUROR DAVIS:** Yeah.

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1 **MR. VAN NEST:** Let me ask, while we're talking about
2 copyrights, does anybody in our panel hold a copyright on
3 anything?

4 Has anybody applied for a copyright?

5 Does anybody have strong views about copyrights or
6 copyrightability?

7 This is a case about copyrights. Both Oracle and Google
8 have a lot of copyrights. But in this particular case Oracle
9 has the copyrights and they're asserting them against Google.

10 Is there anybody -- and I'll ask for a show of hands.
11 Does anybody feel that the owner of the copyright starts off
12 ahead in a copyright lawsuit that's disputed?

13 Anybody feel that just because -- before there's any
14 evidence, just because Oracle holds the copyrights, they start
15 off a little bit ahead of Google, which is the defendant?

16 How about patents -- oh, yes, sir, Mr. Stromsness.

17 **PROSPECTIVE JUROR STROMSNESS:** I think the judge told
18 us earlier that if -- that it's already settled that the
19 copyright is held, and so the burden of evidence is with
20 Google.

21 **MR. VAN NEST:** And let me ask about that. He did say
22 that. And you were listening closely.

23 Does that cause you to put one party ahead of the other at
24 the starting gate?

25 **PROSPECTIVE JUROR STROMSNESS:** I'm not sure "ahead."

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1 It's just who has to show whatever the burden is.

2 **MR. VAN NEST:** But in terms of -- we all know that
3 someone -- someone mentioned it's got to be proven, it's got to
4 be evidence. And that's certainly true, and you'll hear that a
5 number of times.

6 In terms of where we stand now, before there's any
7 evidence, you would place the two parties on an equal footing?

8 **PROSPECTIVE JUROR STROMSNESS:** Yes.

9 **MR. VAN NEST:** Is there anybody that feels different,
10 either because Oracle holds a copyright or because of anything
11 Judge Alsup said?

12 Does anybody feel that the parties are not on an even
13 footing starting out, or that Google is behind? That's what I
14 would really be concerned about --

15 (Laughter)

16 **MR. VAN NEST:** Anybody put Google behind?

17 Okay. Good. Thank you. I appreciate that.

18 Let's ask Mr. Bruesewitz. I just want to clarify what you
19 said about Mr. Ellison. Obviously, he's the CEO of Oracle.
20 He'll play a role in the case.

21 Is he someone you admire a lot? You mentioned Lanai and
22 golf and all that. Tell us about your views on Mr. Ellison.

23 **PROSPECTIVE JUROR BRUESEWITZ:** Just especially in our
24 culture today, it's not, how would you say, normal for people
25 to actually look at someone and say, I want to be that. Now

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1 it's like, I deserve that. So I consider him a pretty
2 inspiring person.

3 **MR. VAN NEST:** Okay.

4 **PROSPECTIVE JUROR BRUESEWITZ:** The fact he's been able
5 to do what he's been able to do.

6 **MR. VAN NEST:** He's accomplished a lot. If I ask you,
7 do you admire Mr. Ellison, the answer would be?

8 **PROSPECTIVE JUROR BRUESEWITZ:** Yes.

9 **MR. VAN NEST:** Okay. And have you been following his
10 career in particular?

11 **PROSPECTIVE JUROR BRUESEWITZ:** No, just Lanai.

12 (Laughter)

13 **MR. VAN NEST:** Just Lanai. That was a big one.

14 **PROSPECTIVE JUROR BRUESEWITZ:** Yeah. I played there
15 twice, so I knew he bought it. I was hoping he would make the
16 course a little nicer.

17 (Laughter)

18 **MR. VAN NEST:** How does that impact your thinking
19 here?

20 **PROSPECTIVE JUROR BRUESEWITZ:** I don't see the
21 relevance, myself.

22 **MR. VAN NEST:** Would you be able to put that aside,
23 and, again, put Google and Oracle on the same footing in the
24 case?

25 **PROSPECTIVE JUROR BRUESEWITZ:** Of course.

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1 **MR. VAN NEST:** Would your admiration come into play at
2 all, even a little?

3 **PROSPECTIVE JUROR BRUESEWITZ:** I don't see how it
4 could because I don't see him on a day-to-day basis kind of
5 thing. I don't have a personal attachment to him.

6 **MR. VAN NEST:** Is there anything else about the case
7 you've heard that causes you to question whether you would be
8 impartial?

9 **PROSPECTIVE JUROR BRUESEWITZ:** I actually haven't
10 heard about the case, which I guess is shocking from what
11 everyone is saying.

12 **MR. VAN NEST:** Good. You haven't heard or read
13 anything about the case, sounds like.

14 **PROSPECTIVE JUROR BRUESEWITZ:** No.

15 **MR. VAN NEST:** All right. Let me ask a couple of
16 other questions, just general, for the group.

17 Most people raised their hands on Google products.

18 Is there anybody on our panel that has never used a Google
19 product?

20 Google products are Google Search, Google Maps, Google
21 Mail. I think everybody knows.

22 Is there anybody that's never used a Google product?

23 Okay. The marketing people will be very happy about that.

24 Is there anybody on the flip side, anybody that's been
25 unhappy with a Google product, or had a problem that was

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1 significant that caused them concern or inconvenience, or cost
2 them money? Again, with any of the Google products that we're
3 all familiar with.

4 Has anybody dealt with Google in any way? You've met with
5 Google sales folks, other than just in the course of using
6 Google products. Does anybody deal on a regular basis with
7 anybody from Google?

8 How about from Oracle -- yes, Mr. Haley.

9 **PROSPECTIVE JUROR HALEY:** Point of clarification. I
10 do have my next-door neighbor. He's head of worldwide
11 marketing for applied computing.

12 **MR. VAN NEST:** For Oracle?

13 **PROSPECTIVE JUROR HALEY:** For Google.

14 **MR. VAN NEST:** For Google.

15 Okay. Do you speak with him often about work? Are you
16 close friends?

17 **PROSPECTIVE JUROR HALEY:** Seldom. Basic neighbor
18 talk.

19 **MR. VAN NEST:** That wouldn't influence your thinking
20 in this case?

21 **PROSPECTIVE JUROR HALEY:** No.

22 **MR. VAN NEST:** He's not a close friend --

23 **PROSPECTIVE JUROR HALEY:** No.

24 **MR. VAN NEST:** -- or anything like that?

25 **PROSPECTIVE JUROR HALEY:** No.

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1 **MR. VAN NEST:** On the same vein, has anybody dealt
2 with people from Oracle? Salespeople or marketing people or
3 the field application people.

4 Ms. Hines. Tell us about that.

5 **PROSPECTIVE JUROR HINES:** So, at PG&E our main billing
6 system is owned by Oracle. And so if we make enhancements, we
7 work with consultants from their side to get that work, the
8 code in and completed.

9 **MR. VAN NEST:** That's something you did personally --

10 **PROSPECTIVE JUROR HINES:** Uh-huh.

11 **MR. VAN NEST:** -- with them?

12 And how often were you working with your Oracle
13 representative?

14 **PROSPECTIVE JUROR HINES:** It depends on the project.
15 I've only been on one project where we were working directly
16 with the Oracle consultant to get the code completed. And that
17 was last year.

18 **MR. VAN NEST:** Was that a good experience?

19 **PROSPECTIVE JUROR HINES:** Yeah.

20 **MR. VAN NEST:** Any problems, anything like that?

21 **PROSPECTIVE JUROR HINES:** Huh-uh.

22 **MR. VAN NEST:** On that project were you seeing your
23 Oracle representative every day, every week, every month? How
24 often --

25 **PROSPECTIVE JUROR HINES:** We had weekly status

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1 meetings.

2 **MR. VAN NEST:** Would that cause you any concern in
3 terms of sitting in a case where Oracle is one party and Google
4 is the other party?

5 **PROSPECTIVE JUROR HINES:** No.

6 **MR. VAN NEST:** This didn't become a close friendship
7 or anything like that?

8 **PROSPECTIVE JUROR HINES:** No.

9 **MR. VAN NEST:** This is just business.

10 **PROSPECTIVE JUROR HINES:** Yes.

11 **MR. VAN NEST:** You don't think that would enter into
12 your thinking at all?

13 **PROSPECTIVE JUROR HINES:** No.

14 **MR. VAN NEST:** Thank you, Ms. Hines.

15 Anybody else?

16 Mr. Stromsness.

17 **PROSPECTIVE JUROR STROMSNESS:** Years ago, at the
18 Performing Arts Center at UC Berkeley, Sun Microsystems
19 sponsored a dance series, and worked with us with some loaned
20 hardware to put up a Gopher server. For people who remember
21 back.

22 And then the person who worked with us there sent me --
23 you know, cold-called me sometimes after that before she went
24 to work for HP. But that's it. That was 20 years ago.

25 **MR. VAN NEST:** Okay. And a long time ago. That was

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1 Sun?

2 **PROSPECTIVE JUROR STROMSNESS:** That was Sun, yeah.

3 **MR. VAN NEST:** Anybody else have experience?

4 Mr. Haley.

5 **PROSPECTIVE JUROR HALEY:** I apologize. I triggered my
6 thought process.

7 We did run Oracle Financials.

8 **MR. VAN NEST:** We did what?

9 **PROSPECTIVE JUROR HALEY:** My company ran Oracle
10 Financials. So we had a whole implementation scheme. This was
11 probably 2001-2002, sometime in that time frame.

12 So at that point I did have a fair amount of interface
13 with them, when we were doing that. Can't recall any specifics
14 in terms of people and names.

15 **MR. VAN NEST:** So you may have interacted with folks
16 from Oracle?

17 **PROSPECTIVE JUROR HALEY:** Sure.

18 **MR. VAN NEST:** But that was quite a long time ago?

19 **PROSPECTIVE JUROR HALEY:** Sure, yes.

20 **MR. VAN NEST:** And that doesn't give you any pause in
21 terms of sitting on this case and being fair?

22 **PROSPECTIVE JUROR HALEY:** No.

23 **MR. VAN NEST:** Thank you for bringing it up.

24 Google is in the news a lot. Oracle is in the news too.

25 Has anybody read anything about Google recently that they

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1 think would impact their thinking to this case? I'm not
2 limiting to this case. Judge Alsup has made clear we are not
3 to be doing that.

4 But has anybody read anything about Google recently that
5 they think might impact their thinking about this case?

6 Okay. Good.

7 Has -- has -- do any of you work for companies -- and,
8 Mr. Haley, I'm going to hold on, on you, on this one because
9 you've already said something about it. So I'm going to exempt
10 you from answering it.

11 Does anybody else have any responsibility for intellectual
12 property where they work? By that I mean patents or copyrights
13 or trademarks or any of that. Just give me a hand up.

14 Nobody?

15 What I'm asking about is if anyone at work -- not at
16 home -- has any responsibility for either getting patents or
17 filing patents or copyrights or that sort of thing.

18 Okay. Very good.

19 I'm going to ask one of our new jurors.

20 Ms. Yasumoto, good afternoon.

21 You said you're deputy county counsel. Give us a little
22 discussion about your range of responsibilities at the County.

23 **PROSPECTIVE JUROR YASUMOTO:** So I either handle or
24 oversee all of our employment litigation. And also oversee all
25 of our legal services to our Health and Human Services Agency,

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1 which is an integrated super agency.

2 **MR. VAN NEST:** Okay. So the employment. Employment
3 litigation, that's usually against the County?

4 **PROSPECTIVE JUROR YASUMOTO:** Against the County, yeah.
5 Against employees.

6 **MR. VAN NEST:** And are you --

7 **PROSPECTIVE JUROR YASUMOTO:** Dealing with the union.

8 **MR. VAN NEST:** Are you a supervising attorney on those
9 cases?

10 **PROSPECTIVE JUROR YASUMOTO:** I am.

11 **MR. VAN NEST:** So you're in court?

12 **PROSPECTIVE JUROR YASUMOTO:** Arbitration.

13 **MR. VAN NEST:** In arbitration. Okay. And is that a
14 daily activity? Weekly? Monthly?

15 **PROSPECTIVE JUROR YASUMOTO:** I'm not in arbitration
16 daily or weekly, but I'm handling employment on an ongoing
17 basis.

18 **MR. VAN NEST:** What about the Health and Human
19 Services side, what's the nature of that work?

20 **PROSPECTIVE JUROR YASUMOTO:** Overseeing everything
21 from LPS trials to juvenile dependency, CPS, mental health
22 issues, public health, social services.

23 **MR. VAN NEST:** No responsibility for intellectual
24 property for copyrights or patents or anything like that?

25 **PROSPECTIVE JUROR YASUMOTO:** No.

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1 **MR. VAN NEST:** And have you read anything about this
2 case?

3 **PROSPECTIVE JUROR YASUMOTO:** No.

4 **MR. VAN NEST:** Let me ask another general question.
5 There was talk earlier about billions. And somebody said
6 something about agreement.

7 I want to make clear that nobody is in agreement about
8 billions on this case.

9 So I want to ask this question: Is there anybody that
10 would not be willing to award nothing if that's what the
11 evidence showed was correct?

12 Is there anybody that feels like, gee, they're here; gee,
13 they're the plaintiff we've got to give them something no
14 matter what the evidence shows? Is there anybody who has that
15 frame of mind? Everybody is going to wait and hear the
16 evidence on that subject?

17 I didn't want my silence to suggest that I believe this
18 thing has anything to do with billions. And maybe you guys
19 assumed that, but I just wanted to be sure.

20 Now, one of the things that Judge Alsup has mentioned is
21 fair use. The fair use doctrine and so on.

22 Does anybody have any familiarity with fair use, or come
23 into contact with it at work or in the course of -- yes, sir,
24 Mr. Stromsness.

25 **PROSPECTIVE JUROR STROMSNESS:** At UC Berkeley we would

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1 somewhat regularly get, you know, all employee emails
2 reminding -- mainly aimed at professors about what they were
3 allowed to do in their courses, and what they weren't allowed
4 to do in their courses. It didn't really apply to me on the
5 administrative computer support side.

6 **MR. VAN NEST:** These were general emails?

7 **PROSPECTIVE JUROR STROMSNESS:** Yeah, always deans and
8 directors memos, so they went to everyone at the campus.

9 **MR. VAN NEST:** Do you have enough recollection of any
10 of those to be familiar with fair use? Or is this something
11 you saw in the past?

12 **PROSPECTIVE JUROR STROMSNESS:** I remember that there
13 were four tests, and mainly that they told professors to
14 contact the intellectual property office if they had questions.

15 **MR. VAN NEST:** Okay, good. And you would be able to
16 set aside anything you remember about that, and follow
17 Judge Alsup's instructions in this case?

18 **PROSPECTIVE JUROR STROMSNESS:** Yes.

19 **MR. VAN NEST:** That wouldn't be a problem for you?

20 **PROSPECTIVE JUROR STROMSNESS:** Not at all.

21 **MR. VAN NEST:** There will be testimony during the case
22 about use of software which Google engineers believe was open
23 and free.

24 My question is, is there anybody on the panel that thinks
25 that copying is always wrong, no matter what, no matter what

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1 the circumstances are? If you feel that way, give me a hand
2 up.

3 In other words, what I want to know is, is anybody so
4 concerned or offended by someone copying something else, even
5 though they felt it was okay to do, that that would be a real
6 problem in terms of evaluating evidence fairly and impartially,
7 which we all need to do? Anybody feel that way?

8 Anybody have a situation where someone copied from you
9 and -- and became a big deal?

10 Anybody here -- has anybody experienced a situation where
11 you felt that someone, either intentionally or unintentionally,
12 copied your work, used your work?

13 Or has anyone here ever been accused of copying or using
14 anything?

15 Or any of your companies, does anyone work for a company
16 that was accused of taking something from someone else?

17 Mr. Haley, you've already talked about that. That's the
18 patent litigation you are talking about.

19 **PROSPECTIVE JUROR HALEY:** (Nods head.)

20 **MR. VAN NEST:** Okay. We've heard a little bit about
21 that. Thank you, though, for volunteering.

22 Anybody else been with a company that was accused of
23 taking something that someone else said belonged to them?

24 Anyone work at a company that they claim was harmed by
25 competition from someone else, wrongfully so? Any of your

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1 companies, your employers?

2 Anybody in a situation where their company felt, hey, this
3 other company is not competing fairly, not playing by the
4 rules?

5 Okay. Good. Great.

6 Is there -- is there anyone that feels as though there's
7 some question that we haven't asked, that we should have asked
8 about you, that might affect your thinking about this case?

9 I know that's pretty open-ended. But what I'm trying to
10 get at is, you guys have been very patient listening to the
11 questions and responding to them.

12 Does anybody have anything they think should be discussed
13 or brought up for either party, that hasn't come up yet, that
14 we haven't asked you about yet?

15 May I have just a moment, Your Honor?

16 (Pause)

17 **MR. VAN NEST:** I have no further questions, Your
18 Honor.

19 **THE COURT:** Thank you.

20 Mr. Bicks, I was going to give you a moment. But before I
21 do that, Ms. Huynh, I want to make sure that we understand
22 something.

23 You live with your parents; right?

24 **PROSPECTIVE JUROR HUYNH:** Yes.

25 **THE COURT:** So when your dad finds out that you're on

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1 this case, assuming that you get selected, he might be tempted
2 to say something because he owns some stock in one or the other
3 companies.

4 And you would need to tell him you can't -- you're not
5 going to talk about it, you don't want him to -- do you think
6 he would honor that? Or do you think he would be so tempted to
7 say something to you that we couldn't stop him?

8 **PROSPECTIVE JUROR HUYNH:** I think he would understand
9 that I wouldn't be able to say anything to him about this case.

10 **THE COURT:** All right. So will you tell him that?
11 Say, look, Dad, I just can't talk about this case?

12 **PROSPECTIVE JUROR HUYNH:** Yeah. I don't -- I wouldn't
13 tell him that I'm on the case. So I don't think he would ask
14 me.

15 **THE COURT:** All right. Well, if he did find out and
16 he did say something to you that, hey, he owned stock in Oracle
17 or he owned stock in Google, can you promise us that you will
18 completely disregard that and decide -- in deciding this case.

19 **PROSPECTIVE JUROR HUYNH:** Yes. I'm not even sure if
20 he owns stock.

21 **THE COURT:** I know you're not sure. But if it did
22 turn out that way, and if he did blurt it out in some manner,
23 would you promise us that you will disregard that statement?

24 **PROSPECTIVE JUROR HUYNH:** Yes.

25 **THE COURT:** All right. Thank you.

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1 Mr. Bicks, did you have any -- I'll give you a few more
2 minutes to ask some questions of the new arrivals on the panel.

3 **MR. BICKS:** Thank you, Your Honor.

4 Good afternoon.

5 Ms. Yasumoto, you described that you, I think, were a
6 foreperson on a jury before.

7 **PROSPECTIVE JUROR YASUMOTO:** That's correct.

8 **MR. BICKS:** And, just, how was that experience?

9 **PROSPECTIVE JUROR YASUMOTO:** Interesting.

10 (Laughter)

11 **MR. BICKS:** Tell me about that.

12 **PROSPECTIVE JUROR YASUMOTO:** Well, being on the other
13 side, seeing it from completely different vantage points.

14 **MR. BICKS:** Understood.

15 Anything about that that would influence anything on this
16 case if you sat on it?

17 **PROSPECTIVE JUROR YASUMOTO:** No.

18 **MR. BICKS:** You mentioned, I think, you're more
19 typically on the defense side rather than the plaintiff side.

20 **PROSPECTIVE JUROR YASUMOTO:** It depends. But I
21 guess -- I guess that's probably an accurate statement.

22 **MR. BICKS:** Anything about that -- we're over here.
23 We're on the plaintiff's side. And some people -- nothing
24 wrong with it, but sometimes there's some people kind of feel
25 one way or the other they don't like people on the plaintiff's

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1 side. McDonald's coffee example.

2 Any kind of orientation on your part that puts you more,
3 kind of, leaning toward the defense side rather than
4 plaintiff's side?

5 **PROSPECTIVE JUROR YASUMOTO:** I don't think so.

6 **MR. BICKS:** Just to our new three folks, just because
7 I didn't have a chance to speak with you as with the others, I
8 was focused on a couple of key things, which are people that --
9 you know, that we're requesting a very, very high amount of
10 damages. And any concerns about that among, any of the three
11 of you?

12 Ms. Davis, anything, when I mention that?

13 **PROSPECTIVE JUROR DAVIS:** (Inaudible.)

14 **MR. BICKS:** I'm sorry, I can't hear you.

15 **THE COURT:** Give her the mic.

16 **PROSPECTIVE JUROR DAVIS:** They always seem like high
17 amount of damages to me.

18 **MR. BICKS:** Yeah. And explain what you mean by that.

19 **PROSPECTIVE JUROR DAVIS:** Well, every time I see a
20 business lawsuit, they just always seem high. But I don't have
21 any feeling about it one way or the other as far as if it's
22 right or wrong.

23 **MR. BICKS:** Understood.

24 **PROSPECTIVE JUROR DAVIS:** Just like another
25 billion-dollar lawsuit.

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1 **MR. BICKS:** But when you say that, in your -- kind of,
2 your heart, are you sitting there thinking, you know, You folks
3 should have worked this out?

4 **PROSPECTIVE JUROR DAVIS:** No. I don't read the
5 business section. I don't -- I'm not really involved in
6 business or sports. Those are the two things I don't get into.

7 **MR. BICKS:** Ms. Huynh, anything, any concerns or --
8 about sitting on a case, if you were on it, where we're asking
9 for those kind of damages?

10 **PROSPECTIVE JUROR HUYNH:** No.

11 **THE COURT:** Microphone.

12 **MR. BICKS:** On Oracle, kind of, anything negative that
13 either of the three of you, kind of, heard, feel, see, as we've
14 been in the room talking, that you think the folks at Oracle or
15 I should know about, something that would be important in this
16 case?

17 **PROSPECTIVE JUROR HUYNH:** No, not from me.

18 **PROSPECTIVE JUROR YASUMOTO:** (Shakes head.)

19 **MR. BICKS:** Thank you, Your Honor.

20 **THE COURT:** Thank you, Mr. Bicks.

21 Okay. Again, I ask you, full disclosure time, anything
22 you want to volunteer to put it out there for us to evaluate
23 just out of an abundance of caution? If so, raise your hand.

24 So if you are selected, you must listen carefully and
25 impartially -- meaning fair to both sides -- to all the

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1 evidence; and then at the end of the case lay the evidence
2 alongside the elements of proof that I will give you; and then
3 ask the question whether or not the party with the burden of
4 proof has carried the burden of proof under the law. And if
5 the answer is yes, then they win. If the answer is no, then
6 they lose.

7 And are you all able to do that and to do that fairly and
8 impartially? If so, raise your hand.

9 (Show of hands.)

10 **THE COURT:** Okay. Everyone has raised their hand.
11 Okay. Can we pass the panel for cause?

12 **MR. VAN NEST:** May I approach, Your Honor?

13 **THE COURT:** All right. We will have a sidebar.
14 (The following proceedings were heard at the sidebar:)

15 **THE COURT:** All right. Can we pass the panel for
16 cause?

17 **MR. VAN NEST:** Your Honor, I think Ms. Shattuck, again
18 has indicated an inability to comprehend and follow this
19 testimony and evidence like this.

20 And she's expressed in a number of different ways that she
21 is not capable of following technical testimony about
22 computers. And that's, of course, what we're going to be
23 talking about. She said it both in Mr. Bicks' questions, she
24 said it in my questions. She said it in your questions. And
25 she said it most clearly in my questions that she just doesn't

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1 understand.

2 And I think that, given we want the jurors that understand
3 and can follow evidence, she should be stricken, excused.

4 **MR. BICKS:** I don't think that's right, Your Honor.
5 This woman has a degree from Berkeley and is clearly a very
6 bright, thoughtful person. I don't believe the standard is we
7 have to have all tech savvy people on a jury.

8 When you asked her could she be fair, she said she could.
9 I think she's in here feeling a little bit, kind of,
10 intimidated. And I don't mean it in an overt physical way.

11 But I just don't see that. That's a smart person. I
12 don't think that's the standard. I really don't.

13 **THE COURT:** Can I make a ruling?

14 **MR. BICKS:** Yeah.

15 **MR. VAN NEST:** Sure.

16 **THE COURT:** Denied. The -- I agree that she's
17 probably on the lower half of the ability of the 16 people to
18 understand the technology. But that's not the test. Under the
19 law, we can't exclude her for that reason.

20 And she is bright enough and I think she will try hard to
21 understand it. And there are certainly other people on the
22 jury that I have equal doubts about, that I won't tell you who
23 they are. But I think there are several on the jury who have
24 even less chance of grasping it. So I will never get a jury
25 that's technically savvy.

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1 Anyway, that motion is denied.

2 All right. Anyone else?

3 **MR. VAN NEST:** No, Your Honor.

4 **MR. BICKS:** No.

5 **THE COURT:** Anyone on your side?

6 **MR. BICKS:** No.

7 **THE COURT:** Do you understand the process that we're
8 going to go through now?

9 **MR. BICKS:** It may be worth explaining it.

10 **THE COURT:** Okay. So you go first, Mr. Bicks. You
11 stand and excuse whoever you want. Then it goes to --
12 challenge goes to Van Nest. Then back to you until each of you
13 have done three.

14 If you pass, you do not -- you've used it. You don't get
15 a chance to go back and retrieve it. It's gone forever. And
16 if there are two consecutive passes, then the lowest ten seat
17 numbers will be the jury.

18 **MR. BICKS:** In other words, you stand up and you do
19 it. We don't exchange -- we don't give you a list of three?

20 **THE COURT:** No, no. You have to do it in open court.
21 And you don't give a reason. You just --

22 **MR. VAN NEST:** Thank and excuse.

23 **THE COURT:** You thank and excuse.

24 **MR. VAN NEST:** Ask the Court to thank and excuse.

25 **THE COURT:** You give the names. And you don't give a

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1 reason. You just do it.

2 **MR. VAN NEST:** Yeah.

3 **THE COURT:** And you get to go first as the plaintiff.

4 **MR. BICKS:** And do I have a chance to confer with our
5 client?

6 **THE COURT:** Yeah, take -- how long do you need though?

7 **MR. BICKS:** Ten minutes?

8 **THE COURT:** Then I have to -- I'm going to -- well, do
9 you want the jury here while you do that? Maybe you do.

10 **MR. BICKS:** Whatever -- maybe we can just go out in
11 the hallway. It's not going to take a long time, but I just
12 feel --

13 **THE COURT:** Ten minutes is a long time. How about
14 five minutes?

15 **MR. BICKS:** All right. Let's do that.

16 **THE COURT:** All right. I'll give you five minutes.
17 And I'll just keep the jury here.

18 **MR. BICKS:** Thank you.

19 **THE COURT:** Thank you.

20 **MR. VAN NEST:** Thank you, Your Honor.

21 (Sidebar concluded.)

22 **THE COURT:** Let me explain to all of you what is about
23 to happen.

24 The lawyers, in just a few moments -- I'm giving them five
25 minutes to consult -- will stand and excuse three per side, up

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1 to three per side. And then the remaining ten will be the
2 jury.

3 So they are going -- I'm letting them step into the
4 hallway so they can make their final decision. So it's just
5 best if you sit tight for a moment.

6 And then all of those in the back of the room, probably
7 I'm not going to need you, but you need to stay here just in
8 case.

9 So I'm giving them a few moments. It will save time if I
10 just ask you to sit there. And if you have a book, read it for
11 a few minutes. And you can go on and consult your emails and
12 so forth.

13 But don't talk about the case, of course. And just bear
14 with us while we let the lawyers make their best estimates as
15 to what the right thing to do is.

16 (Pause)

17 **THE COURT:** All right. Now, Counsel, are we ready to
18 proceed?

19 **MR. VAN NEST:** Yes, Your Honor.

20 **MR. BICKS:** Yes, Your Honor.

21 **THE COURT:** All right. Before we proceed, I just want
22 you, over there in the jury box, to appreciate that we are
23 about to make the decisions about who gets to stay on the jury
24 and not.

25 So if there is anything you feel you've got to raise your

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1 hand and tell us, do it now. You cannot do it after these
2 lawyers make their selections.

3 All right. So based upon that, at this time, Oracle
4 has -- the challenge lies with Oracle.

5 **MR. BICKS:** Thank you, Your Honor. So Oracle thanks
6 and excuses juror 1, Mr. Stromsness.

7 **THE COURT:** All right. Mr. Stromsness, you're
8 excused. Please go back to the jury assembly room and tell
9 them you've been excused. Have a great day. Thank you very
10 much.

11 And, now, the challenge lies with Google.

12 **MR. VAN NEST:** Your Honor, Google would ask the Court
13 to thank and excuse juror number 4, Mr. West.

14 **THE COURT:** Mr. West, you're excused with thanks to
15 the Court.

16 Please go back to the jury assembly room and tell them
17 what happened.

18 The challenge lies with Oracle.

19 **MR. BICKS:** Oracle thanks and excuses juror number 5,
20 Mr. Wong.

21 **THE COURT:** Mr. Wong, thank you. You're free to go.
22 Go back to the jury assembly room and tell them what happened.
23 Google.

24 **MR. VAN NEST:** Your Honor, we would request that you
25 thank and excuse juror number 12, Mr. Bruesewitz.

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1 **THE COURT:** Mr. Bruesewitz, thank you. You're free to
2 go. And go back to the jury assembly room and tell them what
3 happened.

4 And now Oracle.

5 **MR. BICKS:** Oracle thanks and excuses juror number 8,
6 Ms. Huynh. Thank you.

7 **THE COURT:** All right. Ms. Huynh, you're free to go
8 back to the jury assembly room. Tell them what happened.

9 The final challenge lies with Google.

10 **MR. VAN NEST:** Just a moment, Your Honor.
11 Your Honor, Google requests that the Court thank and
12 excuse juror number 16, Ms. Kreslake.

13 **THE COURT:** Ms. Kreslake; right? You're free to go
14 back to the jury assembly room. We thank you very much.
15 Please have a great day.

16 All right. So would you two please move down these two
17 seats.

18 And then, Ms. Harper, I'm going to ask you to come around
19 and take the fifth seat.

20 And then you three scoot down one seat each. Yes, you
21 three over there, we're consolidating. Move over.

22 Okay. See how we've got two rows of five? That's it.
23 Two times five is ten.

24 Congratulations. You're going to be the jury to decide
25 this case.

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1 At this time, please stand and raise your right hand.

2 (Jurors sworn.)

3 **THE COURT:** Thank you. Have a seat.

4 At this time what I'm going to do is ask you to go into
5 the -- let me just make sure, so far everything is cool; right?
6 We did it right? I excused the right people?

7 (Laughter)

8 **MR. VAN NEST:** You did, Your Honor.

9 **THE COURT:** Okay. Good.

10 **MR. VAN NEST:** Just right.

11 **THE COURT:** Right?

12 **MR. BICKS:** Everything is cool.

13 (Laughter)

14 **THE COURT:** All right. Now, what we're going to do is
15 introduce you to your new home away from home, which is behind
16 this door.

17 And every morning, when you get here by 7:45, and --
18 you're over there acting like something is wrong, Ms. Davis.
19 What's the problem?

20 **PROSPECTIVE JUROR DAVIS:** No.

21 **THE COURT:** You're in shock?

22 (Laughter)

23 **THE COURT:** Well, it's like the Army. Okay. 7:45.
24 When you arrive by 7:45, I get you hot coffee. It's going to
25 be there. And federal doughnuts. And you will enjoy being in

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1 the jury room.

2 And then you'll enjoy the trial even more. We have these
3 great lawyers. You're going to see a very good performance by
4 both sides.

5 So what we're going to do is, you get to go back in there
6 and she's going to give you a badge. She's going to give you a
7 spiral notebook to take notes in. And she will give you some
8 instructions on how to get in here in the morning. And then
9 you'll be on your way.

10 And I'm not going to bring the jury back in today, but I
11 do-- is that all right, Counsel? Or do you want me to bring
12 them back in for more admonitions?

13 **MR. BICKS:** No, no that's fine.

14 **MR. VAN NEST:** No, Your Honor.

15 **THE COURT:** Okay. I do want to give you a couple of
16 admonitions.

17 You are going to be deciding an important case. You
18 cannot let anyone talk with you. There are people out there in
19 the -- not these people, not the lawyers or -- but there are
20 people out there who are propagandists and have views about
21 things. And if they were to come and try to talk to you about
22 this case, I would put them in jail. And you would need to let
23 me know that they had done that.

24 So you have to stay pure and don't talk with anyone about
25 this case. And don't do any research about this case. And

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1 don't put on your Facebook or Twitter or any of those things
2 that you have anything to do with this case. That's really --
3 I have to give you that direct order to make sure that we
4 protect the integrity of this trial. So that's the main thing.

5 I want you to -- the flu season is behind us, thankfully.
6 But wash your hands like crazy. Don't get the flu. Don't get
7 sick because then we have to slow down the trial and maybe
8 not -- you know, and it goes past June 10th. So stay healthy.

9 And the great thing about a trial is you don't have to do
10 any homework. You sit back and see what the lawyers convince
11 you of or don't convince you of. And so you just have to pay
12 close attention and follow the law. That's your main
13 obligation in life right now. At least in the courtroom.

14 Okay. Counsel, I'm going to send them back to the jury
15 room unless you want me to say anything more.

16 **MR. BICKS:** We're fine. Thank you, Your Honor.

17 **MR. VAN NEST:** Thank you, Your Honor.

18 **THE COURT:** And then you get to go out to the secret
19 passageway out of here. And then don't let any member of the
20 press -- there are people out there, members of the press --
21 actually, they're pretty high standards and a lot of integrity.
22 They're not going to do it. But you cannot talk to anybody.

23 After the case is over and I've discharged you, you can
24 hold a press conference.

25 All right. We'll see you here tomorrow at 7:45 or

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1 earlier.

2 **THE CLERK:** All rise.

3 (Jury out at 1:31 p.m.)

4 **THE COURT:** Okay. Be seated.

5 Now, Counsel, as for all of the people in the back of the
6 room, who were excellent candidates to serve on the jury, I'm
7 just going to say that they can take their questionnaire with
8 them. We don't need to collect it at this point; is that
9 correct?

10 **MR. VAN NEST:** That's fine, Your Honor.

11 **THE COURT:** Right.

12 **MR. BICKS:** Yes.

13 **THE COURT:** Okay. Good. So all of you who still have
14 your questionnaire, you can leave the clipboard with us, but
15 you are free to take your questionnaire with you. And we will
16 never know what you put on there because at this point we don't
17 need to know.

18 But let me add this final word. I have been in this job,
19 now, 17 years. And before that I was -- a quarter of a century
20 I was a trial lawyer. And I must say the willingness of good
21 citizens to come and serve their country by serving on a jury,
22 I see it all the time, and it's the most inspiring part about
23 the whole process.

24 So I thank you very much for your willingness to serve.

25 And I hope you have a great day. And good luck to you. And

PROCEEDINGS

1 we'll get you on another case sometime in the future. So
2 bye-bye.

3 (Venire exit courtroom.)

4 **THE COURT:** Okay. Everyone have a seat.

5 At this point, even the people discharged, they're free to
6 stay. They're back to being civilians if they want to stay.

7 Listen. What can I do for you before we break for the
8 day? We're all set for our openings tomorrow?

9 **MR. VAN NEST:** We are, Your Honor. I don't think
10 there's anything else to take up today.

11 **THE COURT:** Right?

12 **MR. BICKS:** Nothing. Thank you.

13 **THE COURT:** All right. So probably by 8 o'clock we'll
14 be under way with opening. You go first. Van Nest goes
15 second.

16 **MR. BICKS:** Yes.

17 **THE COURT:** Then we will get in some of the actual
18 evidence. And we'll break at 1:00 o'clock tomorrow.

19 So do you have your electronic equipment ready to go so it
20 doesn't break down and that kind of thing?

21 **MR. VAN NEST:** We hope so.

22 (Laughter)

23 **MR. VAN NEST:** We hope so.

24 **MR. BICKS:** We'll find out.

25 **MR. VAN NEST:** We've got our own equipment. Let's put

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1 it that way.

2 **MR. BICKS:** I understand everything is in order. It
3 was checked out in good order.

4 **THE COURT:** So my assignment overnight is to try to
5 see if I can get some of your deposition read-ins ruled on.

6 **MR. VAN NEST:** We won't need those, obviously, until
7 Wednesday, Your Honor, I don't believe.

8 **THE COURT:** All right.

9 Well, then, good luck to both sides. We'll see you
10 tomorrow.

11 **MR. VAN NEST:** Thank you, Your Honor.


12 (At 1:35 p.m. the proceedings were adjourned until
13 Tuesday, May 10, 2016.)

14 - - - -

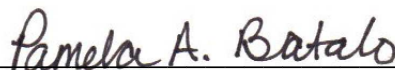
CERTIFICATE OF REPORTERS

16 We certify that the foregoing is a correct transcript
17 from the record of proceedings in the above-entitled matter.

18 DATE: May 9, 2016

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21 _____
22 Katherine Powell Sullivan, CSR #5812, RMR, CRR
23 U.S. Court Reporter

24 

25 _____
Pamela A. Batalo, CSR No. 3593, RMR, FCRR
U.S. Court Reporter